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BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91181448
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IN THE UNITED STATE PATENT & TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

JEFF BROWN,	)	OPPOSITION NO.: 91181448
)	
Opposer,	)	TRADEMARK: PATRIOT GUARD
	)	RIDERS AND DESIGN
v.)	
	)	APPLICATION NO.: 77/040379
PATRIOT GUARD RIDERS, INC.,)	
	)	DATE FILED: NOVEMBER 9, 2006
Applicant.)	
)	

OPPOSER'S MOTION FOR SUMMARY JUDGMENT AND COMBINED BRIEF

DOERNER, SAUNDERS, DANIEL &
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OPPOSER'S MOTION FOR SUMMARY JUDGMENT AND COMBINED BRIEF

Opposer Jeff Brown ("Opposer") submits this Motion for Summary Judgment and Combined Brief pursuant to Federal Rule of Civil Procedure 56 and Trademark Rule of Practice 2.127. Opposer supports this motion with the Declarations of Courtney Bru and Opposer and evidence submitted therewith. Opposer requests that the Board suspend this Opposition pending resolution of this motion pursuant to Trademark Rule of Practice 2.127(d).

I. INTRODUCTION

Thousands of servicemen and women have made the ultimate sacrifice in support of this country's "War on Terror." The oft-overlooked reality of these sacrifices is experienced at regional airports, on local roadways and at graveside services as citizens honor heroes known only as friends and family members. One of the freedoms protected by these soldiers' sacrifices is the freedom to express one's political views and opinions. The members of the Westboro Baptist Church of Topeka, Kansas ("WBC") rely upon these freedoms to express their own views regarding the nation's fall from religious grace. WBC has engaged in a pattern of protest at and during the funerals of fallen soldiers, including the display of large, colorful signs reading "THANK GOD FOR DEAD SOLDIERS," "GOD BLEW UP THE TROOPS" and "GOD

HATES AMERICA.”

As a veteran, Opposer was outraged by these protests and their impact on the families and friends of fallen soldiers. This outrage led him to create and organize the Patriot Guard Riders in November, 2005. When invited by the family, Patriot Guard Riders attend the funerals of fallen soldiers to show their respect and honor their service. When possible, they will visually shield friends and family from protests with their bodies, their bikes and American flags. To this day, Patriot Guard Riders organize rides to honor those who serve, and to peacefully minimize the interruption caused by protesters like WBC in its attempt to exploit the grief of friends and families of fallen soldiers to maximize its own message.

Opposer created the word mark “Patriot Guard Rider” and triangular, folded design to promote the organization and unify the organization’s membership. Opposer designed various goods displaying the mark, paid production costs with his personal funds and arranged for their sale online. Opposer paid all shipping costs to distribute the goods. Opposer operated the store via PGR STORE, LLC, an entity owned and operated by Opposer and his wife, Mrs. Bonnie Brown.

As the organization grew, a small leadership team was implemented. Although Opposer delegated duties within the organization, and granted the organization permission to use the mark he had developed for non-commercial purposes (to promote the interests of families of deceased military members and veterans), Opposer retained sole control over the use of the mark for the production and sale of goods. When the organization incorporated in the state of Oklahoma in February 2006, Opposer intended that PGR, Inc. would continue to have permission to use the mark for noncommercial purposes (i.e., services). Opposer continued to retain sole control over the use of the mark for commercial purposes (i.e., goods).

Shortly after incorporation, Opposer had reason to suspect Jason Wallin, a fellow Board of Directors member, of embezzling money from the organization and/or PGR, Inc. Opposer insisted on an investigation. His desire to flush out the culprit resulted in dissension and division within the Board of Directors. While Opposer was traveling on PGR, Inc. matters, and in an effort to divert suspicion regarding his own activities, Wallin convened a conference call and attempted to convince the Board that Opposer was engaged in “self-dealing” by diverting profits from the sale of merchandise, despite the fact that Wallin and other members had always been aware that the store was owned and operated for profit by Opposer. Although an independent audit ultimately cleared Opposer of any wrongdoing, the Board recorded a vote of “no confidence” in Opposer, and Opposer resigned on November 7, 2006, fearing that Wallin, who owned the domain and computer servers, would shut down the website, effectively bringing an end to the organization. Just days after Opposer’s resignation, the parties filed their respective trademark applications. PGR, Inc.’s accountant later confirmed that Opposer’s suspicions regarding Wallin had been well-founded, and that Wallin had diverted more than \$30,000 from the PGR for his personal use.

II. STATEMENT OF UNDISPUTED FACTS

1. Opposer created and designed the “Patriot Guard Rider” mark. (*See* Declaration of Courtney Bru; Ex. 2 (pp. 37: 16-24, 41: 4-7, 73: 7-10); Ex. 3 (pp. 92: 16-19, 99: 11); Ex. 4 (Resp. to Interrogs. 8, 24)).

2. Opposer created, designed and adopted the mark after the “Run for the Wall” bike event in May of 2005, and at least as early as October 27, 2005. (Ex. 4 (Resp. to Interrog. No. 3); Ex. 5; Ex. 6.)

3. Opposer founded the Patriot Guard Riders organization in late October or early November 2005 by sending out numerous emails to motorcycle organizations and clubs to

recruit them to the organization. Opposer received numerous responses to his emails. (Ex. 1 ¶ 3; Ex. 7.) One such response was from Jason Wallin, who joined the organization on or about November 9, 2005. (Ex. 1 ¶ 4; Ex. 8; Ex. 9 (Resp. to Req. for Adm. No. 5)).

4. Soon after, and with the assistance of new members, Patriot Guard Riders launched its website patriotguard.org. (Ex. 1 ¶ 5; Ex. 4 (Resp. to Interrog. No. 12); Ex. 10.)

5. At the time the organization launched patriotguard.org, Opposer granted the organization permission to use the mark “Patriot Guard Rider” on the website for noncommercial purposes only, to promote the interests of families of deceased military members and veterans. (Ex. 2 pp. 65: 24-25, 66: 1-2, 69: 18-25, 70: 1-3, 15-24, 74: 3-6, 120: 2-5) and Exhibit 4 (Resp. to Interrogs. Nos. 10, 25)).

6. Opposer’s license to the organization for use of the mark in connection with the services did not grant a license to use the mark for use in connection with the production and sale of goods, or for “commercial purposes.” Members could purchase goods displaying the mark from Opposer via the Internet. (Ex. 2 pp. 65: 24-25, 66: 1-2, 67: 6-10, 69: 18-25; Ex. 9 (Resp. to Req. for Adm. Nos. 11, 17)).

7. Opposer and Wallin had discussions wherein Opposer stated that Opposer owned the mark and would retain the right to use the mark for commercial purposes, including selling goods displaying the mark in Opposer’s online store. (Ex. 4 (Resp. to Interrog. No. 9)); Ex. 9 (Resp. to Req. for Adm. Nos. 11, 17); Ex. 11 pp. 18: 6-13, 24-25, 21: 6-13, 80: 9-16, 83: 5-9.)

8. On November 11, 2005, at his own expense, Opposer ordered production of 100 embroidered patches displaying the mark “Patriot Guard Rider.” These patches were displayed for sale on the website patriotguard.org along with information regarding method of purchase. (Ex. 1 ¶¶ 6-7; Ex. 4 (Resp. to Interrog. Nos. 14-16); Ex. 12.)

9. Additional goods displaying the mark “Patriot Guard Rider” were later designed and ordered into production by Opposer, at his own expense, including metal license plates (first use date of December 9, 2005), ornamental/lapel pins (first use date of December 14, 2005), cloth banners and/or fabric flags (first use date of November 29, 2005), hats and t-shirts (first use date of December 8, 2005) and additional embroidered patches (first use date of December 23, 2005). (Ex. 1 ¶ 8; Ex. 4 (Resp. to Interrog. No. 15); Ex. 5; Ex. 6; Ex. 9 (Resp. to Req. for Adm. No. 130).

10. Opposer has produced documentation of orders for goods displaying the “Patriot Guard Rider” mark dated November 28, 2005 (windshield banners), December 5, 2005 (armbands), December 30, 2005 (car flags). (Ex. 1, ¶¶ 9-11; Exs. 15-17.)

11. Opposer similarly processed all orders and paid all shipping costs relating to the sale of goods displaying the mark “Patriot Guard Rider.” (Ex. 1 ¶¶ 6, 11; Ex. 2 p. 125: 10-23; Ex. 4 (Resp. to Interrog. No. 15); Ex. 12.)

12. All goods displaying the “Patriot Guard Rider” mark were delivered to and warehoused at Opposer’s personal residence, located at 8321 South 8th Street, Broken Arrow, Oklahoma. (Ex. 1 ¶¶ 6, 11; Ex. 2 p. 126: 10-23; Ex. 12).

13. On or about February 13, 2006, Opposer’s wife, Mrs. Bonnie Brown, registered a limited liability company in the State of Oklahoma, PGR STORE, LLC. (Ex. 1 ¶ 12; Ex. 9 (Resp. to Req. for Adm. No. 124); Ex. 18.)

14. On February 21, 2006, the Patriot Guard Riders organization was incorporated as a not for profit corporation in the state of Oklahoma under the name “Patriot Guard Riders, Inc.” (Ex. 1 ¶ 13; Ex. 9 (Resp. to Req. for Adm. No. 125; Ex. 19.) PGR, Inc. adopted a Board of Directors structure.

15. Opposer intended that the permission granted to the organization to use the mark for noncommercial purposes would transfer to PGR, Inc. (Ex. 2 pp. 67: 6-10, 69: 18-25, 70: 1-3.)

16. In February 2006, Opposer began working with John Jacobs, an attorney, to register the mark “Patriot Guard Riders.” (Ex. 1 ¶ 14; Ex. 2 p. 18: 17-25; Ex. 21.)

17. Opposer worked with John Jacobs to grant others a license for the mark “Patriot Guard Riders.” (Ex. 1 ¶ 15; Ex. 21.)

18. Jacobs advised Opposer to set forth the oral license to PGR, Inc. in writing, formalizing the arrangement between the parties. Id.

19. In late 2006, Opposer began to suspect the PGR Treasurer, Jason Wallin, was stealing funds from the PGR. In early November 2006, Jason Wallin organized a conference call with all Board members, except Opposer. Although the Board knew that Opposer was traveling at the time, and although no Board conference calls were previously made without notice to each Board member, no effort was made to contact Brown. The Board recorded a vote of no confidence in Opposer by a 3-2 margin. Soon after, on November 7, 2006, Brown resigned as President of PGR, Inc., fearing that Wallin, who owned the domain and computer servers, would shut down the website, effectively bringing an end to the organization. (Ex. 2 pp. 120: 21-25, 121: 1-7; Ex. 3 pp. 74: 9-25, 75: 1-9.)

20. Jeff Brown believed that an application to register the trademark “Patriot Guard Rider” had been filed on his behalf by attorney John Jacobs months before his resignation in November 2006, as evidenced by his expression of that belief to others. (Ex. 1 ¶¶ 16-17; Ex. 2 p. 18: 17-25; Ex. 3 p. 44: 7-9; Ex. 20 p. 82: 12-14; Ex. 23; Ex. 24.)

21. In fact, Opposer’s application was not filed until November 9, 2006. (Ex. 7.)

22. In Application No. 77/041,061, as amended, Opposer claims ownership of the mark “Patriot Guard Rider” in connection with “[a]ssociation services, namely, promoting the interests of **families of deceased military members and families of deceased veterans.**” (Emphasis original). The application states a first use date of “[a]t least as early as 10/27/2005” and a first use in commerce date of “[a]t least as early as 11/09/2005.” (Id.)

23. In addition, Brown claims ownership of the mark “Patriot Guard Rider” in connection with a variety of goods, including metal license plates, ornamental pins, cloth banners (motorcycle banner), fabric flags (vehicle mounted flag), hats (baseball-type cap), short- and long-sleeved t-shirts, embroidered patch. The application states a first use date of “[a]t least as early as 10/27/2005” and a first use in commerce date of “[a]t least as early as 11/09/2005” for each good. Id.

24. The application was filed by Opposer as an “Individual.” Id. Opposer did not intend to file the application on behalf of PGR, Inc. Bru Decl., ¶ 2 and Exhibit A (pp. 47: 11-13 and 48: 2-5)

25. A few hours before Application No. 77/041,061 was filed on behalf of Opposer, Jason Wallin filed Trademark Application Serial No. 77/040,379 on behalf of PGR, Inc. PGR, Inc. claims ownership of the mark “Patriot Guard Riders Riding With Respect,” and submitted a drawing consisting of “a yellow field with a blue and white folded American flag and blue text.” (Ex. 25.)

26. Application No. 77/040,379, filed by Wallin, seeks registration of the mark in connection with “[o]rganizing and conducting support groups in the field of **MILITARY AND MILITARY FAMILY SUPPORT**” (emphasis original) and provides a first use date of “[a]t least as early as 11/11/2005,” and a first use in commerce date of “[a]t least as early as

06/01/2006.” (Id.)

27. PGR, Inc. initially submitted a t-shirt from the Sturgis motorcycle event as the specimen for Application No. 77/040,379. (Ex. 26.) When that specimen was rejected for failure to show use in connection with the services in the application, PGR, Inc. submitted a photograph of a lapel pin bearing the mark “Patriot Guard **Rider** ‘Riding With Respect.’” (Ex. 26; Ex. 27.) This specimen consists of a photograph of the lapel pin manufactured and sold by the Opposer, in which “Rider” appeared in the singular rather the plural as in the drawing submitted by the Applicant. The “s” from the “Riders” portion of the ‘379 mark was omitted, and did not match the drawing submitted with the Application. (Ex. 28.)

28. Jeff Brown filed his Notice of Opposition on December 21, 2007 on the grounds of priority and likelihood of confusion and fraud. (Ex. 30.)

29. On January 29, 2008, during the course of this Opposition, PGR, Inc. filed a Trademark Application Serial No. 77/383,586 claiming ownership of the mark “Patriot Guard Riders,” without claim to any particular font, style, size or color. (Ex. 31.)

30. Application No. 77/383,586 claims ownership of the mark “Patriot Guard Riders” in connection with “[o]rganizing and conducting support groups in the field of combat veterans and their families.” The Application states a first use date of 11/09/2005 and a first use in commerce date of 11/09/2005. (Id.)

31. Application No. 77/383,586 also claims ownership of the mark “Patriot Guard Riders” in connection with a variety of goods, including ornamental pins, commemorative coins, cloth banners, fabric flags, hats, short-sleeved and long-sleeved t-shirts, sweatshirts, “doo-rags,” embroidered patches for clothing and armbands. The earliest first use date for any of these goods is 11/29/2005; the latest first use date for any of these goods is 12/23/2005. The first use

dates are identical to those set forth in Opposer's Application No. 77/041,061. Each of the specimens submitted in connection with Application No. 77/383,586 display the mark "Patriot Guard Riders" in connection with the phrase "Standing for Those Who Stood for Us." (Id.) It is undisputed that PGR, Inc. did not use the mark in commerce at least as early as 11/29/2005, as claimed in the application. In fact, the phrase "Standing for Those Who Stood for Us," which appears on the specimens purporting to support use in commerce in the '586 application, was not used until November or December of 2006, after Opposer resigned from the Board of Directors. (Ex. C pp. 26: 18-25, 27:1-14; Ex. 11 p. 20: 8-13.)

32. After Opposer's resignation, Opposer negotiated with the PGR, Inc. Board of Directors to reduce the previously granted oral license to writing, to restore Opposer's status as founder emeritus, and to restore the link to Opposer's stores to the organization's website. These efforts were unsuccessful. (Ex. 1 ¶ 18; Ex. 2 p. 77: 11-17; Ex. C pp. 91: 23-24, 92: 1-2; Ex. 20 p. 105: 6-14; Ex. 32.)

33. During that time, PGR, Inc. Board of Directors members made various statements on behalf of the Board, as follows:

a. "Sierge, we only have permission to use the PGR logo on the Web site. No permission given for anything else. Respects, Ed [Mueller]. (Ex. 3 pp. 88: 14-25, 89: 1-7; Ex. 33.)

b. "Forbidden design elements include the copy written logo that Jeff Brown drew as we only have permission to use it on the website but not in marketing material." (Ex. 3 p. 89: 15-25; Ex. 34.)

c. "The logo was approved for the Web site, but approval for merchandising was turned down." (Ex. 3 p. 92: 6-21; Ex. 35.)

d. “The logo which appears on the top of our web page is owned by Jeff Brown. He has given us the permission to continue to use it only on our web site, and not for merchandising any product.” (Ex. 3 pp. 93: 19-25, 94: 1-2; Ex. 35.)

e. “The BOD did not accept [Opposer’s] terms, and took a chance, and filed for a trademark on the current Logo.” (Ex. 4 p. 94: 6-25, 95: 1-25; Ex. 36; Ex. 39 (Resp. to Interrog. No. 5).)

f. “1. Jeff created the concept of PGR National and the PGR Store; 2. Jeff designed the logo and the merchandise it appears on; 3. Jeff and his wife are the sole owners of the ‘PGR Store;’ . . . 11. Jeff has offered the PGR the use of the logo and the name Patriot Guard Riders for use on our website only, for a period of one year; 12. Jeff has made it very clear that this excludes the PGR from being able to use the logo or name in connection with any merchandising; . . . 17. The BOD is now working on creating a new logo....” (Ex. 3 pp. 97: 5-25, 98: 1-25, 99: 1-2; Ex. 37.)

36. Opposer continued to sell merchandise displaying the mark “Patriot Guard Rider.” Opposer has continuously sold such merchandise since November of 2006. (Ex. 2 p. 7: 5-11.)

37. In December of 2006, PGR, Inc. launched its own online store to sell merchandise displaying the mark “Patriot Guard Rider.” (Ex. 11 p. 22: 4-6; Ex. 20 p. 107: 20-24.)

38. As a result, both parties currently offer their goods and services over the Internet to the general public and in particular individuals participating as Patriot Guard Riders. (Id; Ex. 1 ¶ 19.)

39. PGR, Inc. does not dispute prior use by Opposer, but maintains that the use of the ‘Patriot Guard *Rider*’ mark in connection with the PGR STORE, LLC or otherwise insures to the

benefit of the Applicant. (Ex. 29.)

40. During deposition testimonies, PGR, Inc. also claimed ownership of the mark because “it was created for an organization that was to operate under that name,” (Perry – 30:10-19) and due to “love of the PGR.” (Ex. 3 p. 30: 10-19; Ex. 20 pp. 97: 20-25, 98: 1-16.)

III. STANDARD OF REVIEW

Summary judgment “should be rendered if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c); Trademark Trial and Appeal Board Manual of Procedure § 528.01, 2d Ed. (Mar. 2004). The movant bears the initial burden of demonstrating that no genuine issue of material fact exists. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). A factual dispute is genuine only if, based upon the evidence in the record, a reasonable fact finder could resolve the matter in favor of the nonmovant. *See e.g., Opreland USA, Inc. v. Great American Music Show Inc.*, 970 F.2d 847, 850, 23 USPQ2d 1471, 1472 (Fed. Cir. 1992). The Board need not try issues of fact when considering a motion for summary judgment; it need only determine whether there exist any genuine issues of material fact. *See e.g., Dyneer Corp. v. Automotive Prods. PLC*, 37 USPQ 1251, 1254 (TTAB 1995).

“When the moving party’s motion is supported by evidence sufficient to indicate that there is no genuine issue of material fact, and that the moving party is entitled to judgment, the burden shifts to the nonmoving party to demonstrate the existence of specific genuinely-disputed facts that must be resolved at trial.” *Hurley Int’l LLC v. Paul Volta et al.*, 82 USPQ2d 1339, 1343 (TTAB 2007). “The nonmoving party may not rest on the mere allegations of its pleadings and assertions of counsel, but must designate specific portions of the record or produce additional evidence showing the existence of a genuine issue of material fact for trial.” *Id.* PGR therefore “must point to an evidentiary conflict created on the record at least by a

counterstatement of facts set forth in detail in an affidavit by a knowledgeable affiant.” *Octocom Sys. Inc. v. Houston Computer Servs. Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1786 (Fed. Cir. 1990). Failure to carry this burden justifies the entry of summary judgment. *See e.g., Celotex Corp. v. Catrett*, 477 U.S. 317, 322-24 (1986).

IV. ARGUMENTS AND AUTHORITIES

The marks in Opposer’s application and those used by PGR, Inc. are confusingly similar. In fact, they are virtually identical. The undisputed facts, supported by the evidence attached hereto, show that there is no dispute as to priority of use by the Opposer. Instead, the question is whether the Opposer’s first use inured to the benefit of the Applicant. Opposer states that he owns the mark ‘Patriot Guard Rider,’ and that he licensed the mark to PGR, Inc. and its predecessor organization for use in connection with association services, namely, promoting the interests of families of deceased military members and veterans. Use by a licensee inures to the benefit of the licensor.

Further, Opposer maintains that Applicant committed fraud when it submitted Applications 77/383,586 and 77/040,379 to the Patent and Trademark Office.

These issues are properly resolved on summary judgment, as there exists no evidence in the record that Opposer’s use of the mark has been anything other than entirely consistent with his intent to license PATRIOT GUARD RIDER to PGR, Inc. for use in connection with the services provided by the organization.

A. Jeff Brown has standing to pursue this Opposition.

Opposer Jeff Brown is the owner of Application No. 77/041,061, filed November 9, 2006, through which he seeks registration of the mark “Patriot Guard Rider.” Opposer would be damaged by the registration of the Applicant’s mark(s) on the Principal Register, and thus is entitled to oppose the registration of Applicant’s mark(s). *See* 15 U.S.C. § 1063; 37 C.F.R. §§

2.101 through 2.107; TBMP §§ 303 *et seq.*

B. The undisputed facts show there exists no question of fact regarding priority of use, and that there is likelihood of confusion as between the marks used by both parties.

Likelihood of confusion is determined on a case-by-case basis and is aided by the application of the factors set forth in *In re E.I. duPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 363 (CCPA 1973):

1. The similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation, and commercial impression;
2. The similarity or dissimilarity and nature of the goods or services as described in an application or registration or in connection with which a prior mark is in use;
3. The similarity or dissimilarity of established, likely-to-continue trade channels;
4. The conditions under which and buyers to whom sales are made, i.e., ‘impulse’ vs. careful, sophisticated purchasing;
5. The fame of the prior mark (sales, advertising, length of use);
6. The number and nature of similar marks in use on similar goods;
7. The nature and extent of any actual confusion;
8. The length of time during and conditions under which there has been concurrent use without evidence of actual confusion;
9. The variety of goods on which a mark is or is not used (house mark, ‘family’ mark, product mark);
10. The market interface between applicant and the owner of a prior mark...;
11. The extent to which applicant has a right to exclude others from use of its mark on its goods;
12. The extent of potential confusion, i.e., whether *de minimus* or substantial;
13. Any other established fact probative of the effect of use.

It is well settled that “any one of the factors may control a particular case.” *In re Dixie Restaurants, Inc.*, 105 F.3d 1405, 1406-07, 41 USPQ2d 1531, 1533 (Fed. Cir. 1997). In any likelihood of confusion analysis, two key considerations are the similarity between the marks and the similarities between the goods. *Federated Foods, Inc. v. Fort Howard Paper Co.*, 192 USPQ 24, 29 (CCPA 1976). The “ultimate question [is] whether relevant consumers are likely to believe that the products or services offered by the parties are affiliated in some way.” *Homeowners Group, Inc. v. Home Mktg. Specialists Inc.*, 78 F.3d 1111, 1116 (6th Cir. 1996).

Both Applicant and Opposer have requested registration of the mark as a word mark. *See*

e.g., In re RSI Sys., LLC, 88 USPQ2d 1445, 1448 (TTAB 2008) (noting that “if one of the marks comprises both a word and a design, then the word is normally accorded greater weight because it would be used by purchasers to request the goods or services”). *See also Anderson Corp. v. Therm-O-Shield Int’l, Inc.*, 226 USPQ 431 (TTAB 1985) (noting that the dominant portion of the mark is the way purchasers would refer to goods or services). All of the marks in question contain some version, singular or plural, of the distinctive term “Patriot Guard Rider,” and are for purposes of comparison, nearly identical. The specimens submitted by each party reveal that the parties have utilized an identical design element in connection with the word mark comprised of a triangular blue, yellow and white design. The marks are not only confusingly similar on the face of the applications, but they are used in a nearly identical manner in commerce.

When the parties claim ownership in identical marks, it is only “necessary that the goods in question be related in some viable manner and be marketed or marketable in a way that might lead purchasers to encounter both parties’ goods and to ascribe to them a common origin because of the identity of the marks.” *Merritt Foods v. Assoc. Citrus Packers, Inc.*, 222 USPQ 255, 256 (TTAB 1984). The parties have requested registration in connection with substantially identical services, namely, organizing and providing support services to military family members. Applicant also seeks registration of the mark in connection with a variety of goods. “[E]ven if the goods in question are different from, and thus not related to, one another in kind, the same goods can be related in the mind of the consuming public as to the origin of the goods. It is this sense of relatedness that matters in the likelihood of confusion analysis.” *Recot, Inc. v. Becton*, 214 F.3d 1322, 1327, 54 USPQ2d 1894, 1897 (Fed. Cir. 2000).

Both parties make their goods and/or services available for sale and/or consumption via the Internet to parties interested in motorcycle activities and/or missions to assist fallen or

disabled soldiers and their families. When both parties offer their goods and services over the Internet to the general public, the parties will be found to utilize identical channels of trade. *Apple Computer v. TVNET.net, Inc.*, Opposition No. 91168875, slip op. at 12 (August 28, 2007) (precedential).

Applicant has offered to stipulate that “there would be likely confusion, mistake or deception between its mark, “PATRIOT GUARD RIDERS RIDING WITH RESPECT,” identified in United States Trademark Application No. 77/040,379 in connection with the stated services, and Brown’s mark “PATRIOT GUARD RIDER,” identified in United States Trademark Application No. 77/041,061 in connection with the stated goods and services,” though its offer was “dependent upon Brown being able to prove that the parties’ use of the respective marks was contemporaneous, *i.e.*, if Brown can prove that his use of the mark “Patriot Guard Rider” was done on his own behalf, as an individual, rather than on behalf of PGR.”

The parties have focused upon these *DuPont* factors during the discovery period. Thus, the Opposition rests upon whether Opposer’s license of PATRIOT GUARD RIDERS to PGR, Inc. inured to the benefit of PGR, INC. rather than to the Opposer.

Although cases involving questions of intent typically pose questions of fact, pursuant to Federal Rule of Civil Procedure 56, the nonmovant must “proffer more than conclusory testimony or affidavits” to disprove allegations of intent. *Medinol Ltd. v. Neuro Vasx, Inc.*, 2003 WL 21189780, slip. op. at * 5, 67 USPQ2d 1205 (TTAB 2003). “An averment of no intent . . . is little more than a denial in a pleading.” *Id.* The TTAB has previously stated that

The appropriate inquiry is therefore not into the registrant’s subjective intent, but rather into the objective manifestations of that intent. ‘We recognize that it is difficult, if not impossible, to prove what occurs in a person’s mind, and that intent must often be inferred from the circumstances and related statement made by that person.’

Id. See also *ITC Ltd. v. Punchgini, Inc.*, 482 F.3d 135, 82 USPQ2d 1414, 1422 (2d Cir. 2007)

(noting that the “summary judgment rule would be rendered sterile...if the mere incantation of intent or state of mind would operate as a talisman to defect an otherwise valid motion”).

The record evidence unequivocally demonstrates that Opposer created the mark “Patriot Guard Riders,” extended an oral license to the PGR organization and corporation, and that both Opposer and the PGR organization and corporation acted consistently with this arrangement until after Opposer’s resignation from the Board of Directors. It is well settled that a trademark license may be either express or implied. *Dawn Donut Co. v. Hart’s Food Stores, Inc.*, 267 F.2d 358, 368 (2d Cir. 1959). An implied license-in-fact “arises out of the objective conduct of the parties, which a reasonable man would regard as indicating that an agreement has been reached.” *Allen-Myland v. Int’l Bus. Machines Corp.*, 746 F. Supp. 520, 549 (E.D. Pa. 1990). The essential characteristics of an implied license are “[p]ermission to use the trademarks coupled with the exercise of reasonable control over such use.” *Villanova Univ. v. Villanova Alumni Educational Foundation, Inc.*, 123 F. Supp. 2d 293, 307 (E.D. Pa. 2000). Opposer granted PGR organization an implied-in-fact license to use the mark for noncommercial purposes, and intended that the implied-in-fact license would transfer to PGR, Inc. at the time of incorporation. Applicant’s objective conduct indicates that such an agreement had been reached. By personally designing and arranging for the production of goods, and by maintaining a position of leadership within the PGR organization and corporation, Opposer exercised “reasonable control” over the use of the mark. (Ex. 2 p. 121: 17-25.)

It is well settled that “[w]here an individual adopts and uses a mark and later orally licenses its use to a corporation of which he or she is the president, the individual, not the corporation, is the owner of the mark...” 2 J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition* § 16:36 (4th ed. 2003). See *Monorail Car Wash, Inc. v. McCoy*, 178 USPQ

434, 438 (TTAB 1973) (finding that corporate officer owned and used the mark in his individual capacity where he originated the mark, developed the goods, arranged for their manufacture, solicited orders for shipments, personally delivered shipments and caused the trademark application to be filed); *In re Briggs*, 229 USPQ 76, 77 (TTAB 1986) (finding that corporate officer owned and used the mark in his individual capacity where he adopted and used the mark, granted the corporation an oral license and directed the activities of the organization, thereby ensuring the quality of the services rendered under the mark).

C. The undisputed facts show that Applicant committed fraud in connection with the filing of its application(s).

There is no dispute and no genuine issue of fact that in its first application, the ‘379 application, Applicant only claimed use of the mark on services, filing specimens that did not show use of the mark in connection with the services and did not match the Applicant’s claimed mark. Applicant later filed substitute specimens (a photograph of one of the pins manufactured by the Opposer, worn on a jacket) that still did not match the mark as filed nor support use of the filed mark in connection with the services identified. These substitute specimens show the term “Rider” in its singular form, although the Applicant’s drawing contains the term in its plural form, “Riders.” In the Applicant’s second application, the ‘586 application, the specimens bearing the tag line “Standing For Those Who Stood For Us” purport to support use in commerce of various goods and services at least as early as 11/09/2005, but testimony given by Applicant clearly establishes that this tag line was not developed nor used in commerce until late November or early December of **2006**.

“Fraud in procuring a trademark registration . . . occurs when an applicant knowingly makes false, material representations of fact in connection with his application.” *Torres v. Cantine Torresella S.r.l.*, 808 F.2d 46, 48, 1 USPQ2d 1483 (Fed. Cir. 1986). An application will

be considered fraudulent when the applicant “knew or should have known” that material information set forth therein was not true. *Id.* at 48. To prove fraud, the Opposer must establish (1) a false statement, (2) made with knowledge, actual or constructive, of its falsity, (3) that is material to the examining attorney’s decision to approve the application. *American Flange & Manufacturing Co., Inc. v. Rieke Corp.*, 80 USPQ2d 1397, 1416, 2006 WL 1706438 (TTAB 2006).

Application Serial No. 77/040,379 filed by PGR contains numerous material false statements. Statements regarding the use of the mark on goods and/or services are material to the issuance of a registration. *Hurley Int’l LLC*, 82 USPQ2d at 1344. Statements regarding specimens submitted in support of an application are also material to registration. *Id.* at 1346. The initial specimen submitted in connection with Application No. 77/040,379 was a black Sturgis t-shirt. When that specimen was refused by the Examining Attorney for failure to show the mark used in connection with the services identified in the application and because the mark on the specimens did not match the mark in the drawing, the Applicant identified a second specimen, a “patch.” The specimen was in fact one of the Opposer’s lapel pins bearing the mark “Patriot Guard Rider” (in the singular) along with the triangular design and the tag line “Riding With Respect.” Those pins were not in use until 12/14/2005, as shown in the Opposer’s application and thus could not support a first use date of 11/11/2005. Applicant knew or should have known this fact based upon its knowledge of the Opposer’s trademark application, which sets forth use dates. This evidence was material to the examiner’s approval of the mark.

Finally, PGR, Inc.’s Application No. 77/040,379 was fraudulently filed because (1) Opposer was using the same mark at the time Jason Wallin signed the oath, (2) Opposer had legal rights superior to PGR Inc.’s rights, (3) as a licensee, PGR, Inc. knew that Opposer had

rights in the mark superior to those of PGR, Inc., knew that a likelihood of confusion would result from Applicant's use of its mark and/or had no reasonable basis for believing otherwise, and (4) by failing to disclose these facts to the Patent and Trademark Office, PGR, Inc. intended to procure a registration to which it was not entitled. *See e.g., Ohio State Univ. v. Ohio Univ.*, 51 USPQ2d 1289, 1999 WL 517202 (TTAB 1999). Opposer has been using the mark in connection with goods and services since November of 2005, long before PGR, Inc. filed its application. Opposer developed the mark, was first to use it, and therefore had legal rights superior to those of PGR, Inc. This knowledge is best demonstrated by the fact that Applicant operated for a significant period of time with clear (and outwardly expressed) knowledge that it had been given a license and did not have ownership or rights to use the mark in a commercial context. *See Marshak v. Treadwell*, 58 F. Supp. 2d 551, 561-68 (D.N.J 1999). Applicant's statements indicating its understanding that it served as a licensee of Opposer undermine any effort on behalf of PGR, Inc. to claim a reasonable belief that PGR, INC. owned the mark in question. In addition, PGR, Inc. made objective statements giving rise to an inference that it was attempting to obtain registration of the mark owned by Opposer.

In order to negate fraudulent intent, Applicant must present evidence that it had "an honest and good faith belief" that it owned the mark "Patriot Guard Riders." *Kemin Indus., Inc. v. Watkins Prods., Inc.*, 192 U.S.P.Q.2d 327, 1976 WL 21132 (TTAB 1976). No such evidence exists.

In sum, the record is entirely devoid of evidence indicating that PGR was anything but a licensee of the Opposer, and had no ownership in the mark "Patriot Guard Riders" or any variation thereof. The record contains no sufficient evidence, defined as objective indicia of Opposer's intent, that he acted on behalf of PGR, Inc. at the time he designed, ordered and paid

for production, or during his distribution of the goods and services contained in his application. The record contains no evidence that Opposer had given Applicant a license to use the mark for anything beyond the association services. In fact, testimony given by Applicant clearly established that the Applicant knew that Opposer had superior rights in the mark and never intended to give PGR, Inc. permission to use the mark on anything other than association services.

V. CONCLUSION

There exists no objective, legally sufficient evidence that the marks are not confusingly similar, that Opposer has priority, or that raises a genuine issue of material fact as to Applicant's fraudulent conduct in filing both the '379 and '586 applications. Accordingly, registration of both the '379 and the '586 applications filed by PGR, Inc. must be denied.

DOERNER, SAUNDERS, DANIEL
& ANDERSON, L.L.P.

By: /s/ Rachel Blue

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 22nd day of January, 2009, a true and correct copy of the above and foregoing was sent via electronic delivery to DMarr@trexlaw.com and that on the 23rd day of January, 2009, mailed, with proper postage thereon, to:

David J. Marr
James R. Foley
James A. O'Malley
Trexler, Bushnell, Giangiorgi,
Blackstone & Marr, Ltd.
105 West Adams Street, 36th Floor
Chicago, IL 60603

/s/ Rachel Blue

THE UNITED STATE PATENT & TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

JEFF BROWN,	)	OPPOSITION NO.: 91181448
)	
Opposer,	)	TRADEMARK: PATRIOT GUARD
	)	RIDERS AND DESIGN
v.)	
	)	APPLICATION NO.: 77/040379
PATRIOT GUARD RIDERS, INC.,)	
	)	DATE FILED: NOVEMBER 9, 2006
Applicant.)	
)	

DECLARATION OF COURTNEY BRU IN SUPPORT OF
OPPOSER'S MOTION FOR SUMMARY JUDGMENT AND COMBINED BRIEF

Commissioner of Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Dear Sir or Madam:

I, Courtney Bru, pursuant to 37 C.F.R. § 2.20, hereby declare as follows:

1. I am an attorney with the law firm of Doerner, Saunders, Daniel & Anderson, L.L.P., counsel for Opposer Jeff Brown in the above-captioned proceeding. As such, I have personal knowledge of the facts set forth below. If called upon and sworn as a witness, I could and would competently testify to the facts set forth below.

2. Exhibit 1 is a true and correct copy of the Declaration of Jeff Brown, executed on January 22, 2009.

3. Exhibit 2 is a true and correct copy of portions of the deposition of Opposer Jeff Brown, held on October 14, 2008.

4. Exhibit 3 is a true and correct copy of portions of the deposition of designated corporate representative Bonnie Perry, held on October 13, 2008.

5. Exhibit 4 is a true and correct copy of Petitioner's Answer to Applicant's First Set

of Interrogatories, served upon Applicant on June 6, 2008.

6. Exhibit 5 is a true and correct copy of Opposer's Application Serial No. 77/041,061, filed on November 9, 2006.

7. Exhibit 6 is a true and correct copy of Opposer's preliminary amendment to Application Serial No. 77/041,061, filed on February 8, 2007.

8. Exhibit 7 is a true and correct copy of document Bates labeled BROWN008014, produced by Opposer on or about June 19, 2008.

9. Exhibit 8 is a true and correct copy of document Bates labeled BROWN008012, produced by Opposer on or about June 19, 2008.

10. Exhibit 9 is a true and correct copy of Petitioner's Response to Applicant's First Requests for Admission, served upon Applicant on June 6, 2008.

11. Exhibit 10 is a true and correct copy of document Bates labeled BROWN008010, produced by Opposer on or about June 19, 2008.

12. Exhibit 11 is a true and correct copy of portions of the deposition of Ronny Awtry, held on October 28, 2008.

13. Exhibit 12 is a true and correct copy of document Bates labeled BROWN010279 – BROWN010280, produced by Opposer on or about November 24, 2008.

14. Exhibit 13 is a true and correct copy of document Bates labeled BROWN010281 – BROWN 01282, produced by Opposer on or about November 24, 2008.

15. Exhibit 14 is a true and correct copy of document Bates labeled BROWN007748 – BROWN007749, produced by Opposer on or about June 19, 2008. During discovery, Opposer and Applicant reached an agreement to waive their respective claims of attorney-client privilege with respect to Mr. John Jacobs.

16. Exhibit 15 is a true and correct copy of document Bates labeled BROWN008034, produced by Opposer on or about June 19, 2008.

17. Exhibit 16 is a true and correct copy of document Bates labeled BROWN010277 – BROWN010278, produced by Opposer on or about November 24, 2008.

18. Exhibit 17 is a true and correct copy of document Bates labeled BROWN010325, produced by Opposer on or about November 24, 2008.

19. Exhibit 18 is a true and correct copy of the registration of PGR Store, LLC issued by the Oklahoma Secretary of State.

20. Exhibit 19 is a true and correct copy of document Bates labeled BROWN007858, produced by Opposer on or about June 19, 2008.

21. Exhibit 20 is a true and correct copy of portions of the deposition of corporate representative William Richart, held on October 13, 2008.

22. Exhibit 21 is a true and correct copy of document Bates labeled PGR003093, produced by Applicant on or about October 9, 2008.

23. Exhibit 22 is a true and correct copy of documents Bates labeled PGR003095 – PGR003100, produced by Applicant on or about October 9, 2008.

24. Exhibit 23 is a true and correct copy of document Bates labeled PGR003094, produced by Applicant on or about October 9, 2008.

25. Exhibit 24 is a true and correct copy of document Bates labeled PGR003140, produced by Applicant on or about October 9, 2008.

26. Exhibit 25 is a true and correct copy of Applicant's Application Serial No. 77/040,379 filed with the United States Patent and Trademark Office on November 9, 2006.

27. Exhibit 26 is a true and correct copy of the specimen submitted by Applicant in

connection with Application Serial No. 77/040,379 on November 9, 2006.

28. Exhibit 27 is a true and correct copy of the specimen submitted by Applicant in connection with Application Serial No. 77/040,379 on August 23, 2007.

29. Exhibit 28 is a true and correct copy of the drawing submitted by Applicant in connection with Application Serial No. 77/040,379 on November 9, 2006.

30. Exhibit 29 is a true and correct copy of the Amended Answer and Affirmative Defenses submitted by Applicant in connection with this Opposition on February 5, 2008.

31. Exhibit 30 is a true and correct copy of the Notice of Opposition submitted by Opposer in connection with this Opposition on December 21, 2007.

32. Exhibit 31 is a true and correct copy of Application Serial No. 77/383,586 filed by Applicant on January 29, 2008.

33. Exhibit 32 is a true and correct copy of a document Bates labeled BROWN006501 – BROWN006506, produced by Opposer on or about June 17, 2008.

34. Exhibit 33 is a true and correct copy of a document Bates labeled PGR001395, produced by Applicant on or about June 18, 2008, and introduced without objection as “Petitioner’s Exhibit 25” during the deposition of Bonnie Perry.

35. Exhibit 34 is a true and correct copy of a document Bates labeled PGR001383, produced by Applicant on or about June 18, 2008, and introduced without objection as “Petitioner’s Exhibit 26” during the deposition of Bonnie Perry.

36. Exhibit 35 is a true and correct copy of a document Bates labeled PGR001398 – PGR001399, produced by Applicant on or about June 18, 2008, and introduced without objection as “Petitioner’s Exhibit 28” during the deposition of Bonnie Perry.

37. Exhibit 36 is a true and correct copy of a document Bates labeled PGR001987 –

PGR001991, produced by Applicant on or about June 18, 2008, and introduced without objection as "Petitioner's Exhibit 29" during the deposition of Bonnie Perry.

38. Exhibit 37 is a true and correct copy of a document Bates labeled PGR002166 – PGR002168, produced by Applicant on or about June 18, 2008, and introduced without objection as "Petitioner's Exhibit 31" during the deposition of Bonnie Perry.

39. Exhibit 38 is a true and correct copy of a letter received from David J. Marr, counsel for PGR, Inc. on December 19, 2008.

40. Exhibit 39 is a true and correct copy of Applicant's Response to Opposer's First Set of Interrogatories, served upon Opposer on or about May 27, 2008.

41. Exhibit 40 is a true and correct copy of Applicant's Response to Opposer's First Set of Requests for Admission, served upon Opposer on or about May 27, 2008.

I declare that all statements made herein of my own knowledge are true and all statements made on information and belief are believed to be true; and further that these statements are made with the knowledge that willful, false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful, false statements may jeopardize the validity of the application or document or any registration resulting therefrom. CHECK AGAINST 37 CFR 2.20.

DATED: 1/22/2009

BY: Courtney Bru
Courtney Bru

IN THE UNITED STATE PATENT & TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

JEFF BROWN,

Opposer,

v.

PATRIOT GUARD RIDERS, INC.,

Applicant.

) OPPOSITION NO.: 91181448
)
) TRADEMARK: PATRIOT GUARD
) RIDERS AND DESIGN
)
) APPLICATION NO.: 77/040379
)
) DATE FILED: NOVEMBER 9, 2006
)

EXHIBIT 40
IN SUPPORT OF OPPOSER'S MOTION FOR SUMMARY JUDGMENT

REQUEST FOR ADMISSION NO. 1

Applicant PGR, Inc. has filed U.S. Serial No. 77383586 for PATRIOT GUARD RIDER
(for the following goods and services with the following dates of first use in commerce:

IC 006. US 002 012 013 014 023 025 050. G & S: Metal license plates. FIRST USE: 20051209. FIRST USE IN COMMERCE: 20051209

IC 014. US 002 027 028 050. G & S: Ornamental pins; commemorative coins. FIRST USE: 20051214. FIRST USE IN COMMERCE: 20051214

IC 024. US 042 050. G & S: Cloth banners; fabric flags. FIRST USE: 20051129. FIRST USE IN COMMERCE: 20051129

IC 025. US 022 039. G & S: Hats; short-sleeved and long-sleeved t-shirts; sweatshirts; doo-rags. FIRST USE: 20051208. FIRST USE IN COMMERCE: 20051208

IC 026. US 037 039 040 042 050. G & S: Embroidered patches for clothing; armbands. FIRST USE: 20051223. FIRST USE IN COMMERCE: 20051223

IC 045. US 100 101. G & S: Organizing and conducting support groups in the field of combat veterans and their families. FIRST USE: 20051109. FIRST USE IN COMMERCE: 20051109

which was filed on January 29, 2008, following the institution of these proceedings.

RESPONSE TO REQUEST FOR ADMISSION NO. 1

Denied. Applicant did not file for block letter registration of the mark PATRIOT GUARD RIDER. The Trademark Office records accurately reflect the information about the trademark registrations applied for by Applicant.

REQUEST FOR ADMISSION NO. 2

Applicant PGR, Inc. has filed U.S. Serial No. 77040379 for PATRIOT GUARD RIDERS RIDING WITH RESPECT and design (for the following goods and services with the following dates of first use in commerce:

IC 045. US 100 101. G & S: Organizing and conducting support groups in the field of combat veterans and their families. FIRST USE: 20051111. FIRST USE IN COMMERCE: 20060601

RESPONSE TO REQUEST FOR ADMISSION NO. 2

Admitted. This information appears to accurately duplicate the information obtained in the records of the Trademark Office.

REQUEST FOR ADMISSION NO. 3

Petitioner Brown filed federal trademark Application No. 77041061 for PATRIOT GUARD RIDERS for the following goods and services with the following dates of first use in commerce:

IC 006. US 002 012 013 014 023 025 050. G & S: Metal license plates. FIRST USE: 20051209. FIRST USE IN COMMERCE: 20051209

IC 014. US 002 027 028 050. G & S: Ornamental pins. FIRST USE: 20051214. FIRST USE IN COMMERCE: 20051214

IC 024. US 042 050. G & S: Cloth banners; Fabric flags. FIRST USE: 20051129. FIRST USE IN COMMERCE: 20051129

IC 025. US 022 039. G & S: Hats; Short-sleeved or long-sleeve t-shirts. FIRST USE: 20051208. FIRST USE IN COMMERCE: 20051208

IC 026. US 037 039 040 042 050. G & S: Embroidered patches for clothing. FIRST USE: 20051223. FIRST USE IN COMMERCE: 20051223

IC 035. US 100 101 102. G & S: Association services, namely, promoting the interests of families of deceased military members and families of deceased veterans. FIRST USE: 20051027. FIRST USE IN COMMERCE: 20051109

Filed on November 9, 2006.

RESPONSE TO REQUEST FOR ADMISSION NO. 3

Denied. The Trademark Office records do not indicate that Opposer applied for a block letter registration of the mark PATRIOT GUARD RIDERS.

REQUEST FOR ADMISSION NO. 4

PGR, Inc., was founded by Jeff Brown.

RESPONSE TO REQUEST FOR ADMISSION NO. 4

Denied. The Oklahoma Secretary of State records indicate that PGR, Inc. was incorporated by each of Jeffrey A. Brown (Opposer), Kurt Mayer and Jason Wallin with each person being named as a Director.

REQUEST FOR ADMISSION NO. 5

Jeff Brown developed the PATRIOT GUARD RIDER and PATRIOT GUARD RIDERS RIDING WITH RESPECT trademarks.

RESPONSE TO REQUEST FOR ADMISSION NO. 5

Denied.

REQUEST FOR ADMISSION NO. 6

Until Brown's resignation from PGR, use of the PATRIOT GUARD RIDER and PATRIOT GUARD RIDERS RIDING WITH RESPECT trademarks by Brown and PGR INC. was with the consent of Brown.

RESPONSE TO REQUEST FOR ADMISSION NO. 6

Denied.

REQUEST FOR ADMISSION NO. 7

PGR Inc. knew of Brown's prior use of the PATRIOT GUARD RIDER and PATRIOT GUARD RIDERS RIDING WITH RESPECT marks when it filed Applications 77/383586 and 77/040379.

RESPONSE TO REQUEST FOR ADMISSION NO. 7

Denied.

REQUEST FOR ADMISSION NO. 8

Applicant's PGR mark is used on clothing and promotional goods.

RESPONSE TO REQUEST FOR ADMISSION NO. 8

Applicant objects to this Request because Applicant's "PGR mark" is not defined. As such, Applicant denies this Request.

REQUEST FOR ADMISSION NO. 9

Applicant makes available for use its PGR products to the same end users as those purchasing PGR products from Petitioner.

RESPONSE TO REQUEST FOR ADMISSION NO. 9

Applicant objects to this Request because "PGR products" is not defined and, moreover, Applicant objects to this Request as being wholly irrelevant to the issues involved in the present Opposition and as being not reasonably calculated to lead to the discovery of admissible evidence. As such, Applicant denies this Request.

REQUEST FOR ADMISSION NO. 10

Applicant makes available for use its PGR goods and services through the same channels of trade as Petitioner's PGR products.

RESPONSE TO REQUEST FOR ADMISSION NO. 10

Applicant objects to this Request because “PGR goods and services” is not defined and, moreover, Applicant objects to this Request as being wholly irrelevant to the issues involved in the present Opposition and as being not reasonably calculated to lead to the discovery of admissible evidence. As such, Applicant denies this Request.

REQUEST FOR ADMISSION NO. 11

Applicant has summarily denied Brown and his wife access to the PGR website and discussion boards.

RESPONSE TO REQUEST FOR ADMISSION NO. 11

Applicant objects to this Request as being wholly irrelevant to the issues involved in the present Opposition and as being not reasonably calculated to lead to the discovery of admissible evidence.

REQUEST FOR ADMISSION NO. 12

Applicant has no basis in fact to assert that Petitioner’s and Applicant’s goods do not experience an overlap among respective customer bases.

RESPONSE TO REQUEST FOR ADMISSION NO. 12

Applicant objects to this Request as being wholly irrelevant to the issues involved in the present Opposition and as being not reasonably calculated to lead to the discovery of admissible evidence.

REQUEST FOR ADMISSION NO. 13

Admit that Jason Wallin filed the applications for the PATRIOT GUARD RIDER and PATRIOT GUARD RIDERS RIDING WITH RESPECT with the Trademark Office on the behalf of Applicant.

RESPONSE TO REQUEST FOR ADMISSION NO. 13

Admitted with regard to the application for PATRIOT GUARD RIDERS RIDING WITH RESPECT. Denied with regard to the application for PATRIOT GUARD RIDER; according to Trademark Office records, this application was filed by Opposer.

REQUEST FOR ADMISSION NO. 14

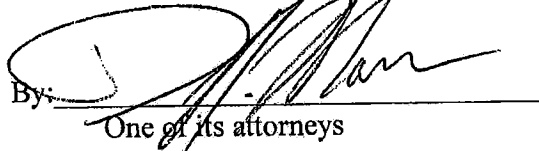
Admit that Jason Wallin did not have prior authorization from the Applicant to file the applications for the PATRIOT GUARD RIDER and PATRIOT GUARD RIDERS RIDING WITH RESPECT marks.

RESPONSE TO REQUEST FOR ADMISSION NO. 14

Denied with regard to the application for PATRIOT GUARD RIDERS RIDING WITH RESPECT. Denied with regard to the application for PATRIOT GUARD RIDER; according to Trademark Office records, this application was filed by Opposer.

Respectfully submitted,

PATRIOT GUARD RIDERS, INC.

By: 
One of its attorneys

Date: 5/27/08

David J. Marr
James R. Foley
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **APPLICANT'S RESPONSE TO OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSIONS** has been served on the following counsel, by United States mail, on May 27, 2008.

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Date: May 27, 2008

By: 

David J. Marr

One of Applicant's attorneys

IN THE UNITED STATE PATENT & TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

JEFF BROWN,

Opposer,

v.

PATRIOT GUARD RIDERS, INC.,

Applicant.

) OPPOSITION NO.: 91181448
)
) TRADEMARK: PATRIOT GUARD
) RIDERS AND DESIGN
)
) APPLICATION NO.: 77/040379
)
) DATE FILED: NOVEMBER 9, 2006
)

EXHIBIT 39
IN SUPPORT OF OPPOSER'S MOTION FOR SUMMARY JUDGMENT

INTERROGATORIES

Subject to and limited by the foregoing General Objections and Conditions, Applicant responds to Opposer's Interrogatories as follows:

INTERROGATORY NO. 1

Identify the officer or agent answering these interrogatories and indicate the duties and the scope of such duties performed by such officer or agent at all times referred to herein.

RESPONSE TO INTERROGATORY NO. 1

Bill Richart, a resident of Sedalia, Missouri, currently the President for Applicant's Board of Directors. Mr. Richart was previously associated with Applicant in the following capacities: Ride Captain – State of Missouri; Forum Moderator for the Patriot Guard website; Missouri State Captain – State of Missouri, Forum Administrator for the Patriot Guard website, Director of Operations, and Vice President for Applicant's Board of Directors.

INTERROGATORY NO. 2

Identify all persons providing any information to answer these interrogatories. State the nature of each person's knowledge relating to these interrogatories.

RESPONSE TO INTERROGATORY NO. 2

1. Bill Richart, a resident of Sedalia, Missouri, is currently the President for Applicant's Board of Directors. Mr. Richart was previously associated with Applicant in the following capacities: Ride Captain – State of Missouri; Forum Moderator for the Patriot Guard website; Missouri State Captain – State of Missouri, Forum Administrator for the Patriot Guard website, Director of Operations, and Vice President for Applicant's Board of Directors.
2. Bill Lowry, a resident of Round Lake, Illinois, is currently acting as a legal liaison for Applicant's Board of Directors. Mr. Lowry was previously a Patriot Guard Riders' State Captain in North Carolina from January 2006 to November 2006,

the Patriot Guard Riders' Fallen Warrior Scholarship Creator and Administrator from December 2006 to November 2007, and Secretary of Applicant's Board of Directors from November 2007 to February 2008.

3. Ed Mueller, a resident of Park Ridge, Illinois, is currently a Patriot Guard Riders member. Mr. Mueller was previously associated with Applicant in the following capacities: Ride Captain – State of Illinois; Assistant State Captain – State of Illinois; Forum Moderator for the Patriot Guard website; Head Forum Moderator for the Patriot Guard website; Regional Captain – responsible for the States of Illinois, Wisconsin, Iowa, Indiana, Michigan, Ohio and Pennsylvania; Member of Applicant's Board of Directors; and President of Applicant's Board of Directors.
4. Jason Wallin, a resident of Windsor, Colorado, is one of Applicant's incorporators, and is a past Treasurer and Vice President of Applicant's Board of Directors.
5. Kurt Mayer is one of Applicant's incorporators, and is a past Secretary of Applicant's Board of Directors.

INTERROGATORY NO. 3

Identify each consultant, advisor or expert who has been retained or specifically employed by you, your attorney, or anyone acting on your behalf, with respect to any issue raised by the documents in this action, in anticipation of litigation, opposition with the trademark trial and appeal board, or preparation for trial and who is not expected to be called as a witness at trial.

RESPONSE TO INTERROGATORY NO. 3

Other than Applicant's undersigned attorneys, no such person currently exists.

INTERROGATORY NO. 4

State the alleged date (*month, day and year*) that Applicant first selected and adopted the alleged marks PATRIOT GUARD RIDERS or PATRIOT GUARD RIDERS RIDING WITH RESPECT and produce documentation to support that date.

RESPONSE TO INTERROGATORY NO. 4

With regard to PATRIOT GUARD RIDERS, and upon information and belief, Applicant states that this mark was first selected and adopted on or after October 27, 2005 and at least as early as November 9, 2005. With regard to PATRIOT GUARD RIDERS RIDING WITH RESPECT, and upon information and belief, Applicant states that this mark was first selected and adopted on or after October 27, 2005 and at least as early as November 11, 2005. Documentation supporting these dates has already been produced.

INTERROGATORY NO. 5

Describe the circumstances surrounding the Applicant's decision to file the application for the marks PATRIOT GUARD RIDERS or PATRIOT GUARD RIDERS RIDING WITH RESPECT.

RESPONSE TO INTERROGATORY NO. 5

With regard to the application for the mark PATRIOT GUARD RIDERS RIDING WITH RESPECT, prior to the removal/resignation of Opposer from the Board of Directors for Applicant ("the Board"), the Board believed that Opposer had previously taken the appropriate steps on behalf of Applicant to apply for and secure federal trademark protection on behalf of Applicant in view of Opposer's comments to members of the Board regarding same. After the removal/resignation of Opposer from the Board, the Board, however, came to find out through a check of the Trademark Office's online records, that contrary to Opposer's comments, federal trademark protection had not been sought on behalf of Applicant. As such, the Board authorized Mr. Jason Wallin to file the application for the mark PATRIOT GUARD RIDERS RIDING WITH RESPECT on behalf of Applicant, which he did on November 9, 2006.

With regard to the application for the mark PATRIOT GUARD RIDERS, as noted in

paragraph #17 of Applicant's *Answer and Affirmative Defenses (Amended)*, Applicant filed the application for the mark PATRIOT GUARD RIDERS in order to more broadly claim its rights in the PATRIOT GUARD RIDERS mark. As noted in footnote #1 of the same document, the application for the mark PATRIOT GUARD RIDERS RIDING WITH RESPECT was prepared and filed without the assistance of an attorney and is limited in scope to the composite mark and design which incorporates the PATRIOT GUARD RIDERS mark, and further only claims protection in connection with Applicant's organizational and support services.

INTERROGATORY NO. 6

State the date, manner and extent of first use of PATRIOT GUARD RIDERS, PATRIOT GUARD RIDERS RIDING WITH RESPECT marks by PGR or its licensees, including the goods upon which such marks were used and the amount of such goods sold and distributed and to whom they were sold and distributed and identify and annex a copy of a representative specimen of the goods bearing the alleged mark as initially so adopted and, if applicable, as so used, as well as a copy of any invoice or other documentation which supports such attested first use of the alleged mark.

RESPONSE TO INTERROGATORY NO. 6

With regard to the PATRIOT GUARD RIDERS mark, Applicant states that the date, manner and extent of first use of this mark, the goods upon which such mark was used, and a representative specimen of the goods bearing this mark, can be found in the records of the United States Patent and Trademark Office in connection with United States Trademark Application Serial No. 77/383,586. With regard to the remaining information requested in this Interrogatory regarding the PATRIOT GUARD RIDERS mark, namely, the amount of such goods sold and distributed and to whom they were sold and distributed, as well as an invoice or other documentation which supports the attested first use of the alleged mark, Applicant states that this information and documentation is in the control of Opposer as he was acting on behalf of Applicant when he first sold and distributed the goods bearing the PATRIOT GUARD RIDERS mark through Applicant's website www.patriotguard.org. Upon Applicant requesting information relating to the sale of goods prior to Opposer's removal/resignation from Applicant's

Board of Directors, Opposer refused to provide the requested information to Applicant.

With regard to the PATRIOT GUARD RIDERS RIDING WITH RESPECT mark, Applicant states that the date, manner and extent of first use of this mark can be found in the records of the United States Patent and Trademark Office in connection with United States Trademark Application Serial No. 77/040,379. With regard to the remaining information requested in this Interrogatory regarding the PATRIOT GUARD RIDERS RIDING WITH RESPECT mark, Applicant objects to same as it is clear that Applicant's trademark application for the mark PATRIOT GUARD RIDERS RIDING WITH RESPECT does not currently seek protection of this mark with regard to any goods and, therefore, Applicant objects to this portion of the Interrogatory as being neither relevant to the issues raised in this Opposition, nor reasonably calculated to lead to the discovery of admissible evidence. To the extent that any goods were sold with the mark PATRIOT GUARD RIDERS RIDING WITH RESPECT, Applicant states that the information and documentation supporting the first sale of same is in the control of Opposer as he would have been acting on behalf of Applicant when he first sold and distributed goods bearing the PATRIOT GUARD RIDERS RIDING WITH RESPECT mark through Applicant's website www.patriotguard.org. Upon Applicant requesting information relating to the sale of goods prior to Opposer's removal/resignation from Applicant's Board of Directors, Opposer refused to provide the requested information to Applicant.

INTERROGATORY NO. 7

State whether Applicant considered any alternative *marks* or whether any alternative *forms* of the alleged marks PATRIOT GUARD RIDERS or PATRIOT GUARD RIDERS RIDING WITH RESPECT were considered.

- A. If so, list said alternative marks or forms of the alleged marks PATRIOT GUARD RIDERS or PATRIOT GUARD RIDERS RIDING WITH RESPECT.
- B. Please state whether any of these alternative marks were publicized. If so, identify and annex a copy of any documents containing such publicity.

RESPONSE TO INTERROGATORY NO. 7

Upon information and belief, Applicant states that prior to the adoption of the marks PATRIOT GUARD RIDERS and PATRIOT GUARD RIDERS RIDING WITH RESPECT, no alternative marks of alternative forms of the marks were considered.

INTERROGATORY NO. 8

Identify those responsible for the ultimate selection of the alleged marks PATRIOT GUARD RIDERS or PATRIOT GUARD RIDERS RIDING WITH RESPECT.

RESPONSE TO INTERROGATORY NO. 8

Upon information and belief, the ultimate selection of the marks PATRIOT GUARD RIDERS and PATRIOT GUARD RIDERS RIDING WITH RESPECT was by at least Jason Wallin and/or Opposer.

INTERROGATORY NO. 9

State whether you have ever used the mark PATRIOT GUARD RIDERS in any other form and identify and annex copies of all documents pertaining in any way thereto.

RESPONSE TO INTERROGATORY NO. 9

The mark PATRIOT GUARD RIDERS has been used in connection with the phrase "RIDING WITH RESPECT" as evidenced by United States Trademark Application Serial No. 77/040,379, and is currently being used in connection with the phrase "STANDING FOR THOSE WHO STOOD FOR US" and in state specific items with the phrase "[state name] Rides With Respect", such as "Missouri Rides With Respect". Documentary evidence supporting the foregoing, to the extent such documentation exists, has either previously been produced or will be produced in connection with "*Applicant's Response to Opposer's First Requests for Production of Documents*".

INTERROGATORY NO. 10

State whether Applicant obtained any trademark search reports with respect to the PATRIOT GUARD RIDERS or PATRIOT GUARD RIDERS RIDING WITH RESPECT marks prior to Applicant's adoption and/or use thereof, or at any subsequent time. If so, state:

- A. The date when each such report was requested or ordered;
- B. The date of each such report;
- C. The date upon which each such report was received by Applicant; and
- D. Identify and annex copies of all documents pertaining in any way to any such trademark search reports.

RESPONSE TO INTERROGATORY NO. 10

To the best of Applicant's knowledge, Applicant has never commissioned any trademark search reports with respect to either the mark PATRIOT GUARD RIDERS or the mark PATRIOT GUARD RIDERS RIDING WITH RESPECT. To the extent that the United States Patent and Trademark Office has performed such a search in connection with the prosecution of the United States Trademark Applications for each of these marks, these searches are a matter of public record and are available to the Opposer.

INTERROGATORY NO. 11

Describe the manner in which the Applicant first become aware of Petitioner's use of the marks PATRIOT GUARD RIDER.

RESPONSE TO INTERROGATORY NO. 11

On October 6, 2006, Opposer posted a notice on Applicant's website www.patriotguard.org in which he alleged that the Patriot Guard Riders store was a for-profit corporation, which was separate from the Patriot Guard Riders not-for-profit corporation, that was run by Opposer and his wife. Mr. Ed Mueller, at that time an advisor to the Board of Directors for Applicant ("the Board"), became aware of this posted notice and brought it to the attention of the Board. Thereafter, the Board confronted Opposer and he verified same to the Board, and further refused to disclose his books regarding the sales made by the store to the Board upon Applicant's request. This was the first time that Applicant became aware that

Opposer may have considered his use of the mark PATRIOT GUARD RIDER not on behalf of Applicant, but on behalf of himself, his wife and/or their store. Opposer, however, indicated to the Board in his resignation e-mail letter of November 6, 2006, that he would be closing the store and, therefore, the Board did not concern itself with Opposer's use of the mark PATRIOT GUARD RIDER at that time, thinking the problem would just go away. Only three days later, on November 9, 2006, and contrary to Opposer's stated intentions to the Board about closing the store, Opposer filed his trademark application for the mark PATRIOT GUARD RIDER. Applicant learned of the filing of this trademark application as discussed in the "*Response to Interrogatory No. 12*". Only upon learning of the filing of Opposer's trademark application did Applicant definitively learn that Opposer considered such use of the mark PATRIOT GUARD RIDER to be on his own behalf. Applicant maintains that prior thereto, use of the mark PATRIOT GUARD RIDER for all purposes was done for, and on behalf of, Applicant, and therefore inured to Applicant's benefit.

INTERROGATORY NO. 12

State the dates upon which the Applicant first become aware of Petitioner's filed trademark PATRIOT GUARD RIDER in the United States Trademark Office.

RESPONSE TO INTERROGATORY NO. 12

Applicant first became aware of Opposer's trademark application for the mark PATRIOT GUARD RIDER within approximately one week of the filing date of Opposer's trademark application. Applicant became aware of Opposer's trademark application upon accessing the United States Patent and Trademark Office's website www.uspto.gov and running a search for its own trademark application for the mark PATRIOT GUARD RIDERS RIDING WITH RESPECT. The search turned up both Applicant's trademark application as well as Opposer's trademark application.

INTERROGATORY NO. 13

State whether Applicant investigated or objected to Petitioner's use of the marks PATRIOT GUARD RIDER; if so, identify and annex any report, reports, demand letters, correspondence or other documents prepared as a result of such investigation.

RESPONSE TO INTERROGATORY NO. 13

See "*Response to Interrogatory No. 11*". Applicant also has obviously objected to Opposer's use of the mark PATRIOT GUARD RIDER by its continued participation in the present Opposition. To the extent that any such documents exist to support the foregoing, these documents are either publicly available and/or Applicant has either already produced same or will produce them in "*Applicant's Response to Opposer's First Requests for Production of Documents*".

INTERROGATORY NO. 14

State whether any trademark protection of the marks PATRIOT GUARD RIDER or PATRIOT GUARD RIDERS RIDING WITH RESPECT – other than the application in question – was sought by Applicant outside the U.S.; and if so, state:

- A. The jurisdiction in which an application was filed;
- B. Identify the party that authorized the procurement of such trademark registration(s), and when;
- C. Identify the party who prepared the trademark application(s);
- D. Identify the date upon which the application(s) were filed; and
- E. Identify the officer(s) or agent(s) who executed the application(s) for registration for such trademark(s).

RESPONSE TO INTERROGATORY NO. 14

Applicant objects to this Interrogatory to the extent that it suggests that Applicant has sought trademark protection outside of the United States of America for the application in question.

Applicant has not sought trademark protection outside of the United States of America for any mark, including PATRIOT GUARD RIDER, PATRIOT GUARD RIDERS, and PATRIOT GUARD RIDERS RIDING WITH RESPECT.

INTERROGATORY NO. 15

State whether, at any time during prosecution of any such trademark application, Applicant brought to the attention of the relevant trademark office, the existence of Petitioner's mark; and if so, state the date upon which said notice was served.

- A. Identify and annex a copy of the trademark application(s) in question.
- B. Identify and annex a copy of all correspondence with the relevant trademark offices pertaining to registration of the alleged marks PATRIOT GUARD RIDER.

RESPONSE TO INTERROGATORY NO. 15

As use of the mark PATRIOT GUARD RIDER prior to the filing of Applicant's trademark application for the mark PATRIOT GUARD RIDERS RIDING WITH RESPECT was for all purposes done on behalf of Applicant, Opposer did not, and still does not, have superior rights in the mark PATRIOT GUARD RIDER over Applicant. As such, Applicant did not bring the existence of Opposer's trademark application to the attention of the United States Patent and Trademark Office during the prosecution of either the trademark application for the mark PATRIOT GUARD RIDERS RIDING WITH RESPECT or the trademark application for the mark PATRIOT GUARD RIDERS.

INTERROGATORY NO. 16

State whether Applicant's PATRIOT GUARD RIDERS or PATRIOT GUARD RIDERS RIDING WITH RESPECT services, and/or any products bearing those marks, were sold or used in commerce prior to any filing of the marks by Applicant; and, if so, state the date upon which said sales or use commenced.

RESPONSE TO INTERROGATORY NO. 16

As stated in United States Trademark Application No. 77/383,586, filed on January 29, 2008, first use in commerce of the PATRIOT GUARD RIDERS mark was at least as early as November 9, 2005. As stated in United States Trademark Application No. 77/040,379, filed on November 9, 2006, first use in commerce of the PATRIOT GUARD RIDERS RIDING WITH RESPECT mark was at least as early as June 1, 2006.

INTERROGATORY NO. 17

State whether advance publicity was given to the use of the PATRIOT GUARD RIDER or PATRIOT GUARD RIDERS RIDING WITH RESPECT marks by Applicant, and if so, state when, where, and by what means.

- A. Identify and annex copies of any such advance publicity.
- B. State whether the mark was altered in form or appearance after such advance publicity, and if so, state why.
- C. Identify any such altered forms of the mark.
- D. State whether any such altered forms of the mark receive publicity, and please annex and identify copies of any such publicity.

RESPONSE TO INTERROGATORY NO. 17

Applicant objects to this Interrogatory because the term "advance publicity" is not defined. Applicant further objects to this Interrogatory as being wholly irrelevant to the issues involved in the present Opposition and as being not reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 18

State the total sales per month of products bearing Applicant's alleged PATRIOT GUARD RIDERS or PATRIOT GUARD RIDERS RIDING WITH RESPECT marks for each month, from the date of first sale thereof, to date. State the projected monthly sales of products bearing Applicant's alleged PATRIOT GUARD RIDERS or PATRIOT GUARD RIDERS RIDING WITH RESPECT marks.

RESPONSE TO INTERROGATORY NO. 18

Prior to Opposer's removal/resignation from Applicant's Board of Directors, all sales of products bearing one or more of the marks PATRIOT GUARD RIDER, PATRIOT GUARD RIDERS and PATRIOT GUARD RIDERS RIDING WITH RESPECT were done by Opposer on behalf of Applicant. Prior to Opposer's removal/resignation from Applicant's Board of Directors, Applicant's Board of Directors requested that Opposer provide information regarding the sales of products be provided to them, but Opposer refused. Therefore, Opposer has the

requested sales information for the time prior to Opposer's removal/resignation from Applicant's Board of Directors.

For the time period after Opposer's removal/resignation from Applicant's Board of Directors, Opposer has the requested sales information for products he has sold bearing one or more of the marks PATRIOT GUARD RIDER, PATRIOT GUARD RIDERS and PATRIOT GUARD RIDERS RIDING WITH RESPECT. Applicant objects to providing the requested sales information for products it has sold after Opposer's removal/resignation from Applicant's Board of Directors, which bear one or more of the marks PATRIOT GUARD RIDER, PATRIOT GUARD RIDERS and PATRIOT GUARD RIDERS RIDING WITH RESPECT, as being neither relevant to the issues raised in this Opposition, nor reasonably calculated to lead to the discovery of admissible evidence.

With regard to Opposer's projected monthly sales for products bearing one or more of the marks PATRIOT GUARD RIDER, PATRIOT GUARD RIDERS and PATRIOT GUARD RIDERS RIDING WITH RESPECT, Opposer has such information. Applicant objects to providing the requested projected monthly sales information for products it will sell which bear one or more of the marks PATRIOT GUARD RIDER, PATRIOT GUARD RIDERS and PATRIOT GUARD RIDERS RIDING WITH RESPECT, as being neither relevant to the issues raised in this Opposition, nor reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 19

Identify the classes of purchasers of products bearing the Applicant's PATRIOT GUARD RIDERS or PATRIOT GUARD RIDERS RIDING WITH RESPECT marks.

RESPONSE TO INTERROGATORY NO. 19

Applicant objects to this Interrogatory as being wholly irrelevant to the issues involved in the present Opposition and as being not reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 20

Identify the geographical areas in which products bearing the PATRIOT GUARD RIDER or PATRIOT GUARD RIDERS RIDING WITH RESPECT marks are sold and/or otherwise used.

RESPONSE TO INTERROGATORY NO. 20

Applicant objects to this Interrogatory as being wholly irrelevant to the issues involved in the present Opposition and as being not reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 21

State the net profit to Applicant per month derived from the sale and or distribution of products bearing the PATRIOT GUARD RIDERS or PATRIOT GUARD RIDERS RIDING WITH RESPECT marks, and state the manner in which such profit was determined. Identify and annex copies of all documents pertinent to the termination of such profits.

RESPONSE TO INTERROGATORY NO. 21

Prior to Opposer's removal/resignation from Applicant's Board of Directors, all sales of products bearing one or more of the marks PATRIOT GUARD RIDER, PATRIOT GUARD RIDERS and PATRIOT GUARD RIDERS RIDING WITH RESPECT were done by Opposer on behalf of Applicant. Prior to Opposer's removal/resignation from Applicant's Board of Directors, Applicant's Board of Directors requested that Opposer provide information regarding the net profit derived from the sale and distribution of the products be provided to them, but Opposer refused. Therefore, Opposer has the requested information for the time prior to Opposer's removal/resignation from Applicant's Board of Directors.

For the time period after Opposer's removal/resignation from Applicant's Board of Directors, Opposer has the requested information for products he has sold bearing one or more of the marks PATRIOT GUARD RIDER, PATRIOT GUARD RIDERS and PATRIOT GUARD RIDERS RIDING WITH RESPECT. Applicant objects to providing the requested information for products it has sold after Opposer's removal/resignation from Applicant's Board of Directors, which bear one or more of the marks PATRIOT GUARD RIDER, PATRIOT GUARD RIDERS

and PATRIOT GUARD RIDERS RIDING WITH RESPECT, as being neither relevant to the issues raised in this Opposition, nor reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 22

State whether Applicant's PATRIOT GUARD RIDERS or PATRIOT GUARD RIDERS RIDING WITH RESPECT marks are used on goods or in connection with services sold, distributed or marketed by third parties and if so, identify those third parties.

RESPONSE TO INTERROGATORY NO. 22

As this Interrogatory appears to seek information regarding Applicant's current vendor who sells merchandise bearing either the mark PATRIOT GUARD RIDERS or PATRIOT GUARD RIDERS RIDING WITH RESPECT, Applicant objects to this Interrogatory as being wholly irrelevant to the issues involved in the present Opposition and as being not reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 23

State whether the right to use Applicant's PATRIOT GUARD RIDERS or PATRIOT GUARD RIDERS RIDING WITH RESPECT marks has been transferred, licensed or sold to third parties, and if so, identify such third parties and annex documentary evidence supporting the same.

RESPONSE TO INTERROGATORY NO. 23

Since at least July 22, 2007, Applicant has given permission to its individual State Captains to use Applicant's marks to create items to sell within their individual states on the following conditions: (1) that prior approval first be obtained from Applicant; and (2) that all proceeds from the sale of such items be used for the purpose of supporting and assisting members in carrying out Applicant's mission.

Documentary evidence supporting the foregoing, to the extent such documentation exists, has either previously been produced or will be produced in connection with "*Applicant's Response to Opposer's First Requests for Production of Documents*".

INTERROGATORY NO. 24

Identify and annex a sample of each of Applicant's PATRIOT GUARD RIDER or PATRIOT GUARD RIDERS RIDING WITH RESPECT products as sold or distributed to purchasers.

RESPONSE TO INTERROGATORY NO. 24

Applicant objects to this Interrogatory as seeking the same information and materials requested in "*Interrogatory No. 6*".

INTERROGATORY NO. 25

State, if applicable, the date upon which Applicant first started to advertise using the alleged PATRIOT GUARD RIDERS or PATRIOT GUARD RIDERS RIDING WITH RESPECT marks in their most current form and identify and annex the advertisement.

RESPONSE TO INTERROGATORY NO. 25

Applicant objects to this Interrogatory as the term "advertise" is not defined. According to *Webster's New World College Dictionary*, the term "advertise" means "to tell about or praise (a product, service, etc.) publicly, as through newspapers, handbills, radio, television, etc., so as to make people want to buy it".

In view of the foregoing definition, and with regard to the mark PATRIOT GUARD RIDERS RIDING WITH RESPECT, Applicant states that Applicant's trademark application for the mark PATRIOT GUARD RIDERS RIDING WITH RESPECT as filed was only directed to services for organizing and conducting support groups in the field of combat veterans and their families. Applicant does not sell such services, but rather provides them free of charge on a voluntary basis upon request and, therefore, in accordance with the definition of "advertise" provided hereinabove, Applicant does not and has not "advertised" its services in connection with the mark PATRIOT GUARD RIDERS RIDING WITH RESPECT.

In view of the foregoing definition, and with regard to use of Applicant's PATRIOT GUARD RIDERS mark in connection with services, namely organizing and conducting support groups in the field of combat veterans and their families, as identified in Applicant's trademark application as filed, Applicant does not sell such services, but rather provides them free of charge

on a voluntary basis upon request and, therefore, in accordance with the definition of “advertise” provided hereinabove, Applicant does not and has not “advertised” its services in connection with the mark PATRIOT GUARD RIDERS.

In view of the foregoing definition, and with regard to use of Applicant’s PATRIOT GUARD RIDERS mark in connection with goods sold as identified in Applicant’s trademark application as filed, upon information and belief, Applicant first started to “advertise” use of this mark at least as early as the dates of first use and/or first use in commerce of the goods identified in Applicant’s trademark application. Upon information and belief, such “advertisements” were first made through Applicant’s website www.patriotguard.org.

INTERROGATORY NO. 26

List and describe the products developed and distributed by either Applicant or a third party that bear the PATRIOT GUARD RIDERS or PATRIOT GUARD RIDERS RIDING WITH RESPECT marks as of the date upon which the Applicant first learned of Petitioner’s use of an identical mark, and as of the present date.

RESPONSE TO INTERROGATORY NO. 26

See “*Response to Interrogatory No. 11*” with regard to the date upon which Applicant first learned of Opposer’s use of an identical mark. With regard to products developed and distributed either by Applicant or a third party up to that date, Applicant states that any such products were developed and distributed by Opposer, his wife, and/or their store on behalf of Applicant and, therefore, Opposer already has the requested information. With regard to products developed and distributed either by Applicant or a third party up to the present date, Applicant objects to this portion of the Interrogatory as being wholly irrelevant to the issues involved in the present Opposition and as being not reasonably calculated to lead to the discovery of admissible evidence. Applicant notes, however, that such information can be readily found by clicking on the “PGR Gear” link on Applicant’s website www.patriotguard.org.

INTERROGATORY NO. 27

State whether, to Applicant's knowledge, any product or services bearing Applicant's PATRIOT GUARD RIDERS or PATRIOT GUARD RIDERS RIDING WITH RESPECT marks and Petitioner's PATRIOT GUARD RIDER products and services are sold or otherwise distributed to any of the same purchasers, and if so, identify such purchasers/users and state the date and amount of each purchase/distribution.

RESPONSE TO INTERROGATORY NO. 27

Applicant objects to this Interrogatory as being wholly irrelevant to the issues involved in the present Opposition and as being not reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 28

State whether Applicant is aware of the sale or distribution by others in the same channels of trade as its PATRIOT GUARD RIDERS or PATRIOT GUARD RIDERS RIDING WITH RESPECT products or any similar products. If so, name each such product, identify the manufacturers/developers of such product, and identify the classes of purchasers or end users to whom both Applicant's and the others' products are sold or otherwise distributed.

RESPONSE TO INTERROGATORY NO. 28

Applicant objects to this Interrogatory as being wholly irrelevant to the issues involved in the present Opposition and as being not reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 29

Identify any relationship, whether formal or informal, that exists or existed between any past or current member's of Applicants board of directors, or any other state or national leader of Applicant and any organization or vendor Applicant has authorized, whether formally or informally to use the marks PATRIOT GUARD RIDER or PATRIOT GUARD RIDERS RIDING WITH RESPECT.

RESPONSE TO INTERROGATORY NO. 29

Applicant objects to this Interrogatory as being wholly irrelevant to the issues involved in the present Opposition and as being not reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 30

State any reason, or purported reason for the removal of Jason Wallin from Applicant's Board of Directors.

RESPONSE TO INTERROGATORY NO. 30

Applicant objects to this Interrogatory as being wholly irrelevant to the issues involved in the present Opposition and as being not reasonably calculated to lead to the discovery of admissible evidence.

As to objections:

PATRIOT GUARD RIDERS, INC.

Date:

5/27/08

By:

One of its attorneys

David J. Marr
James R. Foley
James A. O'Malley
TREXLER, BUSHNELL, GIANGIORGI,
BLACKSTONE & MARR, LTD.
105 West Adams Street, 36th Floor
Chicago, Illinois 60603
Tel: (312) 704-1890
Fax: (312) 704-8023

Attorneys for the Applicant

Declaration

I, Bill Richart, declare under penalty of perjury that I am the President of Patriot Guard Riders, Inc., that in this position I am authorized by Patriot Guard Riders, Inc. to execute this Declaration on behalf of the company, that I have reviewed the foregoing *Applicant's Response to Opposer's First Set of Interrogatories*, and that these responses are true and correct to the knowledge available to Patriot Guard Riders, Inc.

Dated: May 27, 2008



Bill Richart

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **APPLICANT'S RESPONSE TO OPPOSER'S FIRST SET OF INTERROGATORIES** has been served on the following counsel, by United States mail, on May 27, 2008.

Tom Q. Ferguson
Rachel Blue
Doerner, Saunders, Daniel & Anderson, L.L.P.
320 South Boston Avenue, Suite 500
Tulsa, Oklahoma 74103-3725
Facsimile: (918) 591-5360

Date: May 27, 2008

By: 

David J. Marr
One of Applicant's attorneys

IN THE UNITED STATE PATENT & TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

JEFF BROWN,

Opposer,

v.

PATRIOT GUARD RIDERS, INC.,

Applicant.

)
) OPPOSITION NO.: 91181448
)
) TRADEMARK: PATRIOT GUARD
) RIDERS AND DESIGN
)
) APPLICATION NO.: 77/040379
)
) DATE FILED: NOVEMBER 9, 2006
)
)

EXHIBIT 38
IN SUPPORT OF OPPOSER'S MOTION FOR SUMMARY JUDGMENT

TREXLER, BUSHNELL, GIANGIORGI, BLACKSTONE & MARR, LTD.

COUNSELORS AT LAW

RICHARD R. TREXLER (1906-1995)
RICHARD BUSHNELL (1926-2004)
RICHARD A. GIANGIORGI
RAIFORD A. BLACKSTONE, JR.
DAVID J. MARR
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JAMES R. FOLEY
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THE CLARK ADAMS BUILDING
105 WEST ADAMS STREET, SUITE 3600
CHICAGO, ILLINOIS 60603-6210
(312) 704-1890

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AND RELATED MATTERS; ALL PHASES
INCLUDING LICENSING AND LITIGATION

FAX: (312) 704-8023
www.trexlaw.com

December 19, 2008

DEC 23 2008

Ms. Rachel Blue
Doerner, Saunders, Daniel & Anderson, LLP
320 South Boston Avenue, Suite 500
Tulsa, Oklahoma 74103-3725

Re: *Jeff Brown v. Patriot Guard Riders, Inc.*
Trademark Opposition No. 91181448
Our Ref.: 2569/47137

Dear Rachel:

We are in receipt of your letter dated November 24, 2008 regarding discovery matters in connection with the above-identified matter. We will address each of the discovery matters identified in your letter hereinbelow in turn.

A. Response to PGR, Inc.'s October 3, 2008 letter

1. PGR's position remains steadfast on all of its relevancy objections made on the grounds that United States Trademark Application No. 77/040,379 for the mark "PATRIOT GUARD RIDERS RIDING WITH RESPECT" does not allege use of the mark in connection with any "products" or "goods".

United States Trademark Application No. 77/040,379 does not allege use of the mark in connection with any "products" or "goods", but rather only alleges use of the mark in connection with "services". As this is the only trademark application that is technically a part of the present Trademark Opposition, this is the only trademark application that truly matters when it comes to discovery issues. The Trademark Trial and Appeal Board will only be deciding whether PGR is entitled to registration of the mark "PATRIOT GUARD RIDERS RIDING WITH RESPECT" in connection with the associated services; the Trademark Trial and Appeal Board will not be deciding whether Jeff Brown is entitled to registration of the mark "PATRIOT GUARD RIDER" in connection with the associated goods and services and further will not be deciding whether PGR is entitled to registration of the mark "PATRIOT GUARD RIDERS" in connection with the associated goods and services.

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Doerner, Saunders, Daniel & Anderson, LLP
December 19, 2008
Page 2

The fact that PGR requested that United States Trademark Application No. 77/383,586 for the mark "PATRIOT GUARD RIDERS" be included in the scope of this Trademark Opposition does not, by any means, mean that it has been included in the scope of this Trademark Opposition. There has been no response to this request by the Trademark Trial and Appeal Board to date and, therefore, United States Trademark Application No. 77/383,586 is now not part of this Trademark Opposition. Furthermore, Jeff Brown did not follow up with a motion or petition to the TTAB that formally requested the inclusion of this application in the Trademark Opposition. Thus, any possible inclusion of United States Trademark Application No. 77/383,586 in this Trademark Opposition at this time would be prejudicially unfair to PGR.

With regard to PGR's reference to United States Trademark Application No. 77/383,586 during the discovery process, PGR states that such reference to this trademark application during the discovery process does not automatically confer that the use of the mark "PATRIOT GUARD RIDERS" in connection with "goods" and/or "services" is relevant to the present Trademark Opposition and the issues involved therein, namely whether PGR is entitled to registration of United States Trademark Application No. 77/040,379 for the mark "PATRIOT GUARD RIDERS RIDING WITH RESPECT" in connection with only "services". PGR further notes that both its Responses to Brown's Interrogatories and Brown's Requests for Admission denote that its answers are subject to the General Objections set forth therein, one of which is that they are objected to to the extent that they seek information which is neither relevant to the issues raised in this Opposition, nor reasonably calculated to lead to the discovery of admissible evidence. PGR's original Response to Request for Admission No. 8 even specifically objected to the Request as being wholly irrelevant to the issues involved in the Opposition. Further, PGR's reference to United States Trademark Application No. 77/383,586 in its original Response to Request for Admission No. 8 cannot be construed in any way to make one believe that PGR believes that United States Trademark Application No. 77/383,586 is a part of this Trademark Opposition or is in any way relevant to the issues involved in this Trademark Opposition. As for the discussion of United States Trademark Application No. 77/383,586 during the deposition of Bill Richart, we note that on pages 89-90 we objected to Ms. Bru's assertion that United States Trademark Application No. 77/383,586 was a part of this Trademark Opposition such that we did, therefore, have a general blanket objection to questions regarding United States Trademark Application No. 77/383,586.

2. PGR acknowledges that the online Notice of Opposition form identifies "Priority and likelihood of confusion" under the heading Grounds for Opposition. PGR, however, is of the position that the inclusion of "likelihood of confusion" on this online form *alone* does not provide sufficient support for Jeff Brown to allege that PGR is not entitled to registration of United States Trademark Application No. 77/040,379 based on a likelihood of confusion. In other words, "likelihood of confusion" was not properly pleaded by Brown.

Ms. Rachel Blue
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Page 3

The Trademark Trial and Appeal Board Manual of Procedure, §309.03(a)(2) "Elements of Complaint – In General", requires, *inter alia*, the following:

A notice of opposition must include (1) a short and plain statement of the reason(s) why opposer believes it would be damaged by the registration of the opposed mark . . . , and (2) a short and plain statement of one or more grounds for opposition.

The elements of a claim should be stated simply, concisely, and directly. However, the pleading should include enough detail to give the defendant fair notice of the basis for each claim.

All averments should be made in numbered paragraphs, the contents of each of which should be limited as far as practicable to a statement of a single set of circumstances. Each claim founded upon a separate transaction or occurrence should be stated in a separate count whenever a separation would facilitate the clear presentation of the matters pleaded. A paragraph may be referred to by number in all succeeding paragraphs, and statements in the complaint may be adopted by reference in a different part of the complaint.

A plaintiff may state as many separate claims as it has, regardless of consistency; a plaintiff may also set forth two or more statements of a claim alternatively or hypothetically, either in one count or in separate counts.

When two or more statements are made in the alternative, the sufficiency of each is determined independently; the fact that one of them may be insufficient does not mean that the other(s) is (are) also insufficient.

As specifically discussed in PGR's "Answer and Affirmative Defenses (Amended)", the written portion of Brown's Notice of Opposition utterly failed to comply with the foregoing requirements. The averments were clearly not made in numbered paragraphs, but rather were submitted in two unnumbered paragraphs, and each claim was clearly not stated in a separate count. From the two unnumbered paragraphs submitted, PGR understood Jeff Brown's two counts to be priority of use and fraud alone, as these were the only two matters discussed in these two unnumbered paragraphs (although the elements of these claims were clearly not stated "simply, concisely, and directly" as required). The two unnumbered paragraphs submitted make

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absolutely no mention of "likelihood of confusion" and, as such, clearly did not present the elements of this claim in a simple, concise and direct manner as required, and further did not provide *any* detail that would give PGR fair notice of Brown's basis for a "likelihood of confusion" claim. Further, the inclusion of "likelihood of confusion" on *only* the online Notice of Opposition form did not present the elements of a likelihood of confusion claim in a simple, concise and direct manner and also did not provide any detail that would give PGR fair notice of the basis for a likelihood of confusion claim.

Regardless of the foregoing, in an effort to minimize the time and money that would presumably be expended by the parties in determining whether "likelihood of confusion" is, in fact, a part of this Trademark Opposition, PGR makes the following stipulation/admission.

In order for Brown to prevail in his Trademark Section 2(d) claim, Brown would have to prove the following three items:

- (1) that Brown has standing to maintain the proceeding;
- (2) that contemporaneous use of the parties' respective marks on their respective goods would be likely to cause confusion, mistake or deception; and
- (3) that Brown is the prior user of his pleaded mark.

With regard to (2), PGR hereby stipulates that there would likely be confusion, mistake or deception between its mark, "PATRIOT GUARD RIDERS RIDING WITH RESPECT", identified in United States Trademark Application No. 77/040,379 in connection with the stated services, and Brown's mark "PATRIOT GUARD RIDER", identified in United States Trademark Application No. 77/041,061 in connection with the stated goods and services. This stipulation, however, is dependent upon Brown being able to prove that the parties' use of the respective marks was contemporaneous, i.e., if Brown can prove that his use of the mark "PATRIOT GUARD RIDER" was done on his own behalf, as an individual, rather than on behalf of PGR.

3. The information identified by you in this paragraph is not, as you state, a ground that PGR set forth as a discovery objection. Rather, the information identified by you in this paragraph was the statement (or a similar statement) made by PGR in responding to Interrogatory Nos. 17-22 and 26-28 that was "Subject to the foregoing General and Specific Objections".

* * * * *

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In view of all of the foregoing, PGR will provide amended/supplemental responses to Interrogatories Nos. 17-22 and 26-28 and to Requests for Admissions Nos. 8-10 and 12.

B. Alleged Insufficient Discovery Responses

1. PGR will amend/supplement its Response to Interrogatory No. 1.

2. Contrary to your statement, PGR did, in fact, produce this October 6, 2006 post of Jeff Brown's, including the follow-up posts related thereto. This post was identified as PGR 001831 - PGR 001930 and was produced to Jeff Brown on June 18, 2008. You have not indicated to us that you did not receive PGR 001831 - PGR 001930 and, therefore, we assume that you have these pages in your possession.

3. As stated above, PGR has amended/supplemented its Response to Interrogatory No. 17.

While PGR does not agree with your position that information regarding "advance publicity" is relevant, PGR has stated that, subject to objections made, that PGR "is presently unaware of any 'advance publicity' that was given to the use of either the 'PATRIOT GUARD RIDER' or 'PATRIOT GUARD RIDERS RIDING WITH RESPECT' marks by" PGR. PGR further stated "that from the inception of the Patriot Guard Riders organization until Opposer's resignation/removal from the Board of Directors for Patriot Guard Riders, Inc., that all of Opposer's actions as they relate to 'advance publicity' of the marks was done on behalf of Applicant, rather than on Opposer's individual behalf."

4. As stated above, PGR has amended/supplemented its Response to Interrogatory No. 18.

Contrary to your assertion, PGR states that sales per month of products bearing the marks PATRIOT GUARD RIDER, PATRIOT GUARD RIDERS and/or PATRIOT GUARD RIDERS RIDING WITH RESPECT, *after the resignation of Jeff Brown*, clearly has absolutely no tendency to prove the date, manner and/or extent of *first use* of those marks by PGR. Furthermore, as this Trademark Opposition is only concerned with whether PGR is entitled to registration of the mark PATRIOT GUARD RIDERS RIDING WITH RESPECT, PGR states the sales per month of products bearing either the mark PATRIOT GUARD RIDER or PATRIOT GUARD RIDERS is irrelevant. Furthermore, PGR did not seek registration of the mark PATRIOT GUARD RIDERS RIDING WITH RESPECT in connection with any products.

TREXLER, BUSHNELL, GIANGIORGI, BLACKSTONE & MARR, LTD.

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Page 6

PGR further states that whether PGR maintained or abandoned use of the mark PATRIOT GUARD RIDERS RIDING WITH RESPECT is not at issue in this Trademark Opposition and, therefore, PGR will not respond to any matters relating to same. This is the first indication that PGR has received that in any way indicates that Jeff Brown is possibly pursuing a claim that PGR has abandoned its use of the mark PATRIOT GUARD RIDERS RIDING WITH RESPECT. Jeff Brown did not plead in his Notice of Opposition that PGR had abandoned its use of the mark PATRIOT GUARD RIDERS RIDING WITH RESPECT as required. Nor did Jeff Brown ever promptly move to amend its Notice of Opposition to assert this claim once Jeff Brown believed it to be relevant to this Trademark Opposition as required. As such, Jeff Brown may not now rely on this unpleaded claim as PGR did not have fair notice that Jeff Brown was alleging this claim. *See e.g., Hilson Research Inc. v. Society for Human Resource Management*, 27 U.S.P.Q.2d 1423 (TTAB 1993) and *P.A.B. Produits et Appareils de Beaute v. Satinine Societa In Nome Collettivo di S.A. e.M. Usellini*, 196, U.S.P.Q. 801 (CCPA 1978).

5. As stated above, PGR has amended/supplemented its Response to Interrogatory No. 19.

6. As stated above, PGR has amended/supplemented its Response to Interrogatory No. 20.

7. As stated above, PGR has amended/supplemented its Response to Interrogatory No. 21.

With regard to your position on abandonment, PGR references the discussion in B4 hereinabove.

8. As stated above, PGR has amended/supplemented its Response to Interrogatory No. 22.

With regard to whether PGR has licensed the mark, PGR states (as it previously did) that, "as presently advised, no third party has ever 'sold, distributed or marketed' PGR's services" and that "from the inception of the Patriot Guard Riders organization until Opposer's resignation/removal from the Board of Directors for Patriot Guard Riders, Inc., that Opposer was not a 'third party', but rather was always acting on behalf of Applicant in connection with any use of the marks on goods or in connection with services sold, distributed or marketed." As far as use of the mark "PATRIOT GUARD RIDERS RIDING WITH RESPECT" on goods goes, PGR maintains its objection on the basis that United States Trademark Application No. 77/040,379 for the mark "PATRIOT GUARD RIDERS RIDING WITH RESPECT" does not allege use of the mark in connection with any goods.

TREXLER, BUSHNELL, GIANGIORGI, BLACKSTONE & MARR, LTD.

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December 19, 2008
Page 7

With regard to your position on abandonment, PGR references the discussion in B4 hereinabove.

9. As stated above, PGR has amended/supplemented its Response to Interrogatory No. 27.

10. As stated above, PGR has amended/supplemented its Response to Interrogatory No. 28.

11. PGR maintains its objection to Interrogatory No. 29.

Regardless of the foregoing, it appears that you are seeking information regarding a suspect relationship between Ed Mueller and CDM. However, as discussed by Ronny Awtry and Bill Richart pursuant to your firm's direct questioning, a friend of Ed Mueller's, who also happened to have the last name Mueller, but who was not a relative of Ed Mueller's, owned/operated CDM (*see Awtry Deposition at pp. 22-23 and 75-76; and see Richart Deposition at pp. 63-66*). As CDM only makes products or goods for PGR, PGR maintains its objection as the trademark application at issue in this Trademark Opposition does not allege use of the mark "PATRIOT GUARD RIDERS RIDING WITH RESPECT" in connection with any "goods" or "products".

In view of the foregoing, no amendment/supplementation to PGR's Response to Interrogatory No. 29 will be forthcoming.

12. PGR has stated on numerous occasions that Jason Wallin was, in fact, authorized by PGR to file the trademark application for the mark "PATRIOT GUARD RIDERS RIDING WITH RESPECT" on behalf of PGR (*see (1) Response to Request for Admission No. 14; (2) Response to Interrogatory No. 5; (3) Amended/Supplemental Response to Interrogatory No. 30; and (4) Deposition of Perry at pp. 46-48*). This fact was then independently confirmed by Ronnie Awtry during his deposition (*see Deposition of Awtry at pp. 60-61*). The independent confirmation of this fact by Ronnie Awtry clearly refutes any basis for Jeff Brown to believe or take a position that PGR did not authorize Jason Wallin to file the trademark application, and further refutes any basis for Jeff Brown to believe or take a position that any credibility issues of PGR's 30(b)(6) witnesses exist with regard to this matter.

In view of the foregoing, no amendment/supplementation to PGR's Response to Interrogatory No. 30 will be forthcoming.

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13. With respect to PGR's objection to Interrogatory No. 40 on the basis of the attorney-client privilege and/or work product immunity doctrine, PGR agrees to the limitations on this objection as set forth by you.

Based on the definition of "dispute" provided in your letter, PGR states that it has undertaken a thorough investigation as to the existence of relevant communications among PGR Board of Director members, past and present, regarding Jeff Brown and this dispute and states that it has already disclosed, with reasonable specificity, through its discovery responses, all such known communications. To the extent that PGR's thorough investigation did not uncover relevant communications among PGR Board of Director members, past and present, regarding Jeff Brown and this dispute, PGR maintains its objection to this Interrogatory and Brown's request for its specificity of any and all such communications, as being unduly burdensome.

In view of the foregoing, PGR will amend/supplement its Response to Interrogatory No. 40.

14. PGR will amend/supplement its Responses to Requests for Production Nos. 26-28.

15. PGR produced PGR 000270 as well as PGR 002961 - PGR 002962 to you. PGR, however, in order to assure that you have copies of these documents, has attached copies of same to this letter.

16. Subject to the objections set forth by PGR, PGR has acted in a good faith manner and to the best of its ability in order to provide you with copies of all responsive, non-privileged documents pursuant to your document requests.

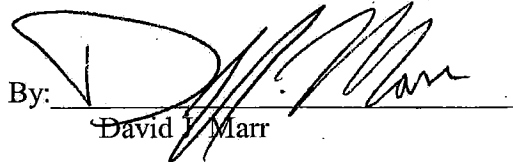
Finally, as noted in your letter, PGR did serve its responses to Opposer's Second Requests for Production of Documents and Opposer's Third Set of Interrogatories by the stated deadline of December 1, 2008. In connection therewith, PGR notes that documents PGR 003963 - PGR 003976 were not included in PGR's document production served on December 1, 2008 as it was noted that these documents were duplicative of other documents. As such, documents PGR 003963 - PGR 003976 were purposely not provided to you. We apologize for failing to mention this to you in our December 1, 2008 letter.

TREXLER, BUSHNELL, GIANGIORGI, BLACKSTONE & MARR, LTD.

Ms. Rachel Blue
Doerner, Saunders, Daniel & Anderson, LLP
December 19, 2008
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Sincerely,

TREXLER, BUSHNELL, GIANGIORGI,
BLACKSTONE & MARR, LTD.

By: 
David J. Marr

DJM/JAO:A78283
Enclosures

IN THE UNITED STATE PATENT & TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

JEFF BROWN,

Opposer,

v.

PATRIOT GUARD RIDERS, INC.,

Applicant.

) OPPOSITION NO.: 91181448

) TRADEMARK: PATRIOT GUARD
) RIDERS AND DESIGN

) APPLICATION NO.: 77/040379

) DATE FILED: NOVEMBER 9, 2006

)

EXHIBIT 37

IN SUPPORT OF OPPOSER'S MOTION FOR SUMMARY JUDGMENT



Wednesday, June 18, 2008

Patriot Guard Riders

Standing For Those Who Stood For US



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Subject: Official Board of Directors Statement 17 Nov 06

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Executive Director

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17 Nov 2006 8:16 PM

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Alert

We realize that there are a lot of questions, a lot of answers, and a lot of rumors floating around concerning the issues that led to Jeff's resignation, and the current status of the PGR as a non-profit organization. Outlined below are the facts as we understand them:

1. Jeff created the concept of PGR National and the PGR store;

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Mission Request

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Contact Us


Contact Arlington National Cemetery




Send Email
Messages

2. Jeff designed the logo and the merchandise it appears on;
3. Jeff and his wife are the sole owners of the "PGR Store;"
4. The PGR Store was placed on the front page of the website for members to order their PGR items (leaving some members to believe that the store belongs to the PGR);
5. We have been told that 100% of the proceeds from the PGR Store belong to Jeff;
6. To date, Jeff has donated approximately \$67,000 to the PGR;
7. Based upon concerns of the membership, the BOD asked Jeff to see the income from the PGR Store for purposes of rebutting recent accusations concerning the monies made from the store;
8. Jeff refused to divulge that information, stating "It is nobody's business";
9. Jeff stated that he has made approximately \$30,000 personal profit from the PGR Store to date, however, in a post today, Jeff stated that his intentions are, and always have been, to donate 50% of all proceeds from his store to the PGR;
10. Based upon the fact that Jeff was making profit from the PGR Store, as the BOD determined created a conflict of interest, when asked by the BOD to give the store to the non profit organization, Jeff chose to resign as the Executive Director of the PGR;
11. Jeff has offered the PGR the use of the logo and the name Patriot Guard Riders for use on our website only, for a period of one year;
12. Jeff has made it very clear that this excludes the PGR from being able to use the logo or name in connection with any merchandising;
13. The BOD understanding its fiduciary responsibility to all of our members and to insure a constant flow of income agreed to expand the offerings in our special events store;
14. While transitioning to new leadership, the BOD through investigation became aware that Jeff had neither completed the trade-marking application for the logo and name, nor the application for National Tax Exempt Status for the PGR (501c3);
15. In keeping with the new leadership methods, the current BOD made this information available to the membership as soon as it came to light;
17. The BOD is now working on creating a new logo (for sale of items in the special events store), drafting appropriate by-laws, and applying for 501c3 tax exempt status (which we understand from our attorney will cover the PGR's activities for the preceding 18 months);
18. From this point forward the current BOD plans to run the PGR as such:

Messages

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America Loves You Silk Rose



PGR Doo-Rag



PGR Armband

a. Transparency with regard to all issues concerning PGR management (i.e., financials, PGR Store (when one is open), decision making processes, changes to national policy, current status of fundraising (acceptance and administration of funds), etc.

b. More open communications with our leaders (Reg. Caps, SCs, RCs, HOTHs, etc.)

c. More diversity among States, allowing more independent operations within those states, while maintaining a uniformity with the national PGR.

As the BOD resolves these current issues, the membership will be notified, and kept apprised of the status of those issues.

With all this said, we would at this time ask our members to digest these facts, and then join us in refocusing our energies, getting back to why we are here, and forging ahead to continue the mission.

You just don't know when an old vet will Snap

Topic is locked

Forums > Patriot Guard Riders - National > Letters from the PGR President > Official Board of Directors Statement 17 Nov 06

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IN THE UNITED STATE PATENT & TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

JEFF BROWN,

Opposer,

v.

PATRIOT GUARD RIDERS, INC.,

Applicant.

) OPPOSITION NO.: 91181448
)
) TRADEMARK: PATRIOT GUARD
) RIDERS AND DESIGN
)
) APPLICATION NO.: 77/040379
)
) DATE FILED: NOVEMBER 9, 2006
)

EXHIBIT 36
IN SUPPORT OF OPPOSER'S MOTION FOR SUMMARY JUDGMENT



Friday, June 13, 2008

Patriot Guard Riders

Standing For Those Who Stood For US

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Subject: New Slogan and Store Opening

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Posted By indyharley on 19 Nov 2006 10:41 AM
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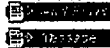
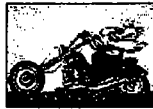


Mission Request

Click on the link below to make initial contact with us regarding honor mission requests:

Contact Us

[Contact Arlington National Cemetery](#)



"Carrying a grudge or a desire to get even with someone is a cancer inside us. It belittles and holds back the spirit".

What has happened has happened - I still feel that the BOD is on the right track. I will not let my spirit be held back. I will wait and see the new documents that will be forthcoming. Anything else is just revenge and wanting to get even."

Whether or not that was directed at me, I would like to pointedly note that I am not interested in getting even. Yes, I have expressed some of my personal opinions here - but I tried very hard to keep my opinions separate from what I believe to be valid questions, and I did my level best to ask those questions in a straightforward manner.

I am deeply concerned with the potential damage to the reputation of this organization as a whole because I feel it directly affects our capability of carrying out our mission. That alone is my reason for pointing out what I believe to be negligence, deceptive practices and enmeshing a for-profit business in the middle of a non-profit organization, implying that all proceeds go to the non-profit.

I am deeply concerned that the BOD plans to continue using a logo that belongs to one individual who will profit from it.

I am deeply concerned that a forum now called Jeff's Store is contained within the forums of Patriot Guard Riders, Inc.

Richard, you also wrote this:

"Before it gets questioned - National had nothing to do with dissolving the by-law committee other than they urged me to continue. It was my decision and I simply dissolved it and recommended that National seek an attorney. Don't ask the why because you won't be prepared for the answer and the answer has nothing to do with Jeff or the present Board. One other note, National sought me out to do the by-laws and they said they did not expect that I or the committee would be easy on them. I assured them they were right on that point."

Thank you for clearing that up, because your last email on that matter did not make it clear. I do not feel it was your place to make that decision, but I am glad to see that input has been requested on how the organization should be structured.

I would like to know why you made the arbitrary decision to dissolve the bylaws committee, even though you have said "don't ask why."



Messages


 [0 Unread Messages](#)

 [0 Read Messages](#)





America Loves You Silk Rose



PGR Doo-Rag

Monica,

Lets put the facts out once again, and I'm sorry if I make an error in all of the chain of events.

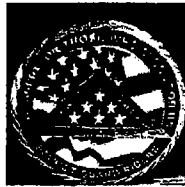
1. The current BOD asked to see the records of the PGR store, we were told, it was a private business, and those records would not be made available to us.
2. Based on that information, the BOD voted No confidence, in respects to the then, Executive Director, and asked for his resignation.
3. Jeff asked that we allow the store to remain open until he sold out all of the product which he currently had in stock, the BOD agreed to that.
4. The BOD, asked Jeff, if we could continue to use the current Logo, since Jeff made it very clear up to that point that he had the Logo trademarked.
5. Jeff told the BOD that we could use the current Logo and name on the website, but would not grant us the use for any items to be merchandised.
6. In an attempt to continue to use the current logo, the BOD negotiated with Jeff, that he could continue to run his store, and Jeff agreed that we PGR could also open a store, and he would grant us the right to use the current logo on any merchandise.
7. During further talks to clarify Jeff's last position, he made it known, that we could only use the current logo, on merchandise, which did not duplicate any item, which he sold.
8. The BOD did not accept those terms, and took a chance, and filed for a trademark on the current Logo. It was at that time, that the BOD found out, that Jeff did not have the Logo trademark, and in fact, our application, had a lower filing number than his. Going back in my memory, without looking up the exact number, I believe our application beat his into the trademark office by approx 700.
9. Since Jeff claimed First Use of the Logo, he feels that he owns the Logo, even though our filing number is lower than his.
10. THE BOD on a conference call with our lawyer, in which the Regional Captains were part of the conversation, was asked his opinion about the Logo dispute.
11. Without going into all the legal wording which he used, our lawyer believes that Jeff has the right to use the Logo, but he would not be able to stop the PGR from using it either. He also advised at that time, if it was necessary to fight this in court, we could figure on it costing the PGR between 50- 70 Thousand dollars.



PGR Armband



Welcome Home Silk Rose



Wounded Warrior Challenge
Coin

12. With no source of income at this time, the BOD had to make a decision, how we were going to continue to fund, our website, pay our accountant, pay for the plaques, pay for legal assistance.....etc....etc....etc....

13. The BOD made a decision, based on many of the threads out here on our website, that changing our Logo, instead of possibly spending thousands of dollars, would be the best direction to take.

14. The BOD, to insure that our Mission went forward, had to insure a source of income to continue operations, and we went forward to open our own store, to generate this income.

All of the above took place in a period of 3 weeks.....While we were also out here on the web, trying to hold this group together, and defending, every little action which we had to take. Many times, not being able to state somethings, because we were still in negotiations with Jeff, who had complete access to what was being said.

I'm not making excuses why everyone wasn't consulted, or even asked for their input. The BOD has a fiduciary responsibility, to everyone of our members, and we took the action which we felt was necessary, to insure that this organization continued to move forward, and accomplish our Mission Statement.

I've now tried my best to spell everything out the best that I can remember these events. I hope this now gives you a better understanding of What the BOD did, and Why.

Respects,
Ed

Freedom
Justice
Brotherhood

[REDACTED]

If your gonna be One.....Be a BIG RED ONE



Diplomacy...the art of telling someone to go to hell.....and they look forward to the trip

Waldo •
Posts: 1325
Windsor, Co
**YOU CAN TALK
ABOUT US...**

**BUT YOU CAN'T
TALK WITHOUT US.**


10 Dec 2006 2:07 AM

 Alert

the crow says

while I very well understand the need for the BOD to make critical decisions in a timely fashion, I am disappointed the RCs/SCs could not have been better informed as to what those decisions were at some point.

new store? logo change? a clue would have been nice.

From National Announcements dated 21 Nov 06 - desision to stand up a new store.

<http://www.patriotguard.org/Forums/tabid/61/view/topic/postid/318031/forumid/155/Default.aspx#318031>

I would like to address some topics with you and the best way for my old mind is by the numbers. So here goes.
1) The PGR store; We are going to TRY and have the new store up by New Years Eve. It will sell all the items it does now and more. And ALL profit will go to the PGR. We are going to outsource this store so that no member will have his hands on it. It will be overseen by a committee of members.

from national website dated 12 nov 06 - introduction of the slogan

 <http://www.patriotguard.org/Forums/tabid/61/forumid/14/postid/304100/view/topic/Default.aspx>

Indy harley says:

Jason the new banner looks great and definitely conveys what we do - thanks for your efforts.

IN THE UNITED STATE PATENT & TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

JEFF BROWN,

Opposer,

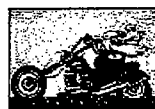
v.

PATRIOT GUARD RIDERS, INC.,

Applicant.

) OPPOSITION NO.: 91181448
)
) TRADEMARK: PATRIOT GUARD
) RIDERS AND DESIGN
)
) APPLICATION NO.: 77/040379
)
) DATE FILED: NOVEMBER 9, 2006
)

EXHIBIT 35
IN SUPPORT OF OPPOSER'S MOTION FOR SUMMARY JUDGMENT



Ed's Profile

Message

The logo was approved for the website, but approval for merchandising, was turned down.

Respects,
Ed

Freedom
Justice
Brotherhood

[REDACTED]

If your gonna be One.....Be a BIG RED ONE



Diplomacy...the art of telling someone to go to hell.....and they look forward to the trip

sierge ●
Posts: 0

Ed's Profile

Message

15 Nov 2006 10:05 PM

Alert

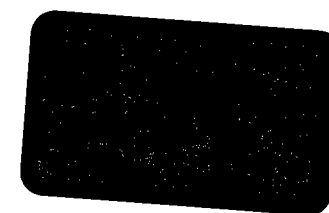
Thanks Ed I think your answer says it all.

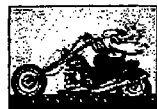
Wescot2 ●
Posts: 2787
Park Ridge, Illinois

15 Nov 2006 10:54 PM

Alert

The logo which appears on the top of our web page is owned by Jeff Brown. He has given us the permission to continue to use it only on our web site, and not for merchandising any product.





Wescoot2

Posts: 2787

11/15/2006

The designs which hopefully will be submitted for the coins, will be the beginning of an additional new identification, as we move forward.

Respects,
Ed

Freedom
Justice
Brotherhood

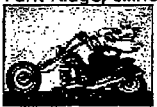


If your gonna be One.....Be a BIG RED ONE



Diplomacy...the art of telling someone to go to hell.....and they look forward to the trip

Wescoot2 •
Posts: 2787
Park Ridge, Illinois



Wescoot2

Posts: 2787

11/15/2006

15 Nov 2006 11:12 PM

Alert

Please note the word I used.....which was additional.....I have numerous items, such as patches, banners, and pins, which I already have sewn on my vest, or items on my car. I'm not ready to say they are all obsolete, and replace them.....hence, the new designs are additions, to what many of our members already have.

Respects,
Ed

IN THE UNITED STATE PATENT & TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

JEFF BROWN,

Opposer,

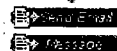
v.

PATRIOT GUARD RIDERS, INC.,

Applicant.

)
) OPPOSITION NO.: 91181448
)
) TRADEMARK: PATRIOT GUARD
) RIDERS AND DESIGN
)
) APPLICATION NO.: 77/040379
)
) DATE FILED: NOVEMBER 9, 2006
)
)

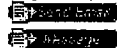
EXHIBIT 34
IN SUPPORT OF OPPOSER'S MOTION FOR SUMMARY JUDGMENT



Waldo •
Posts: 1325
Windsor, Co
**YOU CAN TALK
ABOUT US...**



**BUT YOU CAN'T
TALK WITHOUT US.**



Thom
USAF Vet 75-81

15 Nov 2006 2:58 PM

Alert

we need to set up some ground rules around this what would you think of these?

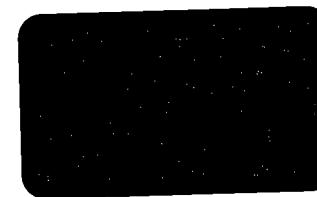
Proposed Rules for Challenge Coin Design

1. Required design elements include the words "Patriot Guard Riders" and "Standing for those who stood for US" (note the us is all caps so that is can mean us or the United States)
2. Forbidden design elements include the copy written logo that Jeff Brown drew as we only have permission to use it on the website but not in marketing material.
3. All designs submitted for consideration become the property of Patriot Guard Riders, Inc. and may be used in marketing materials for the Patriot Guard Riders.
4. There will be a period of 2 weeks in which designs can be submitted
5. After the 2 week period, the national board will select up to 5 finalists.
6. After the finalists are chosen, then general membership will vote on the finalist designs for a period of 1 week.
7. The winner will receive \$100 store credit for the special events store (where the coin will be sold)

Jason Wallin "WALDO"
Deputy Executive Director
Corporate Treasurer
Patriot Guard Riders

**American By Birth
Biker By Choice
Patriot Forever!**

Tact and Political Correctness were developed by those who lack the testicular fortitude to say what



IN THE UNITED STATE PATENT & TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

JEFF BROWN,

Opposer,

v.

PATRIOT GUARD RIDERS, INC.,

Applicant.

) OPPOSITION NO.: 91181448
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)
) APPLICATION NO.: 77/040379
)
) DATE FILED: NOVEMBER 9, 2006
)

EXHIBIT 33
IN SUPPORT OF OPPOSER'S MOTION FOR SUMMARY JUDGMENT

Wescot2 •
Posts: 2787
Park Ridge, Illinois



11/15/2006

Zippy Challenge Coin's are about the organization. They are not normally intended for the public. I don't see why Jeff can't be asked to license the PGR to use it.

15 Nov 2006 9:28 PM

Alert

Sierge,

We only have permission to use the PGR Logo on the website, no permission given for anything else.

Respects,
Ed

Freedom
Justice
Brotherhood



If your gonna be One.....Be a BIG RED ONE



Diplomacy...the art of telling someone to go to hell.....and they look forward to the trip

Zippy •
Posts: 6027
Phoenix, AZ

15 Nov 2006 9:32 PM

Alert



IN THE UNITED STATE PATENT & TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

JEFF BROWN,

Opposer,

v.

PATRIOT GUARD RIDERS, INC.,

Applicant.

) OPPOSITION NO.: 91181448
)
) TRADEMARK: PATRIOT GUARD
) RIDERS AND DESIGN
)
) APPLICATION NO.: 77/040379
)
) DATE FILED: NOVEMBER 9, 2006
)

EXHIBIT 32
IN SUPPORT OF OPPOSER'S MOTION FOR SUMMARY JUDGMENT

From: John Jacobs <mnjjacobs@gmail.com>
Sent: Wednesday, November 29, 2006 9:01 PM
To: Jeff Brown <jeffbrown@valornet.com>
Subject: Re: Trademark Issues
Attach: PGR Inc License Draft 2.doc

I've made some changes and put comments/suggestion in brackets with yellow highlight. I don't think the formal license attachment is necessary. If it's not clear why after you read my changes, I can explain further.

On another note, I have to withdraw from our attorney-client relationship in the near future. Not at all because of my personal opinions or positions on the situation with the board - I think you've clearly been wronged - but because of the limits on what I can do outside my full-time job.

I'm only permitted to do "pro bono publico" outside work, which in Pennsylvania means essentially work for charitable organizations or the poor. Until recently, the trademark and related work was pretty clearly for PGR, whatever its legal form. It's become clear that PGR, Inc. is the charitable organization in the eyes of the law and my work for you is becoming distinct from its charitable interests. Since the trademark and copyright work isn't aligned with PGR Inc.'s interests, my work for you is becoming less clearly pro bono, so I'm not permitted by my employer to continue.

I will certainly continue representing you for a short while so you can obtain other counsel and to turn over anything I have to you or another attorney smoothly. At this time, I believe I can continue to work on the filed trademark application (and copyright registration), if you wish, and I'd be happy to do so.

In any event, everything I've done will remain confidential and I'm not permitted to do legal work adverse to your interests on any related matter without your permission.

John Jacobs

On 11/29/06, Jeff Brown <jeffbrown@valornet.com> wrote:

John,

Here's the first draft of the letter and license I will send to the board.

Please feel free to make any changes you feel are appropriate.

Thanks,

Jeff

--

No virus found in this outgoing message.

Checked by AVG Free Edition.

Version: 7.5.430 / Virus Database: 268.14.19/555 - Release Date: 11/27/2006

6:09 PM

11/29/06

Patriot Guard Riders, Inc.
Board Of Directors

Ladies and Gentlemen:

I resigned my position as Executive Director, not out of any wrongdoing, but in a sincere attempt to preserve the organization. Your request for my resignation would have meant a split vote on the board, which could have been very detrimental to the PGR. As it turned out, some of you, along with the "vocal minority" have used my decision to further slander me. Instead of working to put an end to the undeserved attacks on my name and character, some of you continue to work behind the scenes to encourage the slander in an effort to promote your own agenda. This is not only unfair, it is certainly not in the best interests of the PGR. Regardless, I will continue to support the PGR financially and from my heart. [no real comment on this part as it's your opinions, but I'd suggest changing "slander" to "defame" (which means both slander and libel)]

In an effort to preserve the PGR and its mission, I am documenting the permission I've given PGR, Inc. since it's incorporation to use of the Patriot Guard Rider copyright and trademark protected name and logo for identification purposes. As I have always maintained, I have no intention of preventing the use of the name or logo for this purpose so long as PGR mission and its execution remains consistent with my original vision. [feel free to clarify and or put in your own words]

In an effort to continue the growth and effectiveness of the PGR, I believe I have offered no less than four different proposals to allow the PGR Inc. the use of the name and logo for commercial use. You have rejected each of these proposals. Until a satisfactory resolution of this matter can be reached, my permission for your use of the trademark and copyrights by PGR, Inc. will be restricted to group identification purposes [maybe say "including the use of the name and logo in connection with missions"] only. I will remain open to your suggestions at reaching a resolution.

My attorney has assured me that I am the rightful owner of the copyright and trademark rights in the PGR name and logo, and should prevail in a legal battle over the name and logo. I no idea on what grounds your attorney has advised you differently.

Sincerely,

Jeff Brown

[not sure the rest is necessary]

TRADEMARK AND COPYRIGHT LICENSE PGR LOGO AND NAME

THIS TRADEMARK AND COPYRIGHT LICENSE AGREEMENT ("Agreement") is made and entered into effective as of the date signed by Licensor below (the "Effective Date") by and between Jeff Brown, an individual ("Licensor"), and Patriot Guard Riders, Inc., an Oklahoma non-profit corporation ("Licensee").

WHEREAS, Licensor is the owner of the trademark, trade name and copyright rights in "PATRIOT GUARD RIDER", "PATRIOT GUARD RIDERS", "RIDING WITH RESPECT" and the triangle PGR logo (some of which are the subject of applications filed with the United States Patent and Trademark Office) ("Trademarks"); and

WHEREAS, Licensee desires to use the Trademarks, in connection with Licensee's operation of the Patriot Guard Riders, Inc. as of the Effective Date (the "Licensed Use") and

WHEREAS, Licensor, subject to the terms and conditions set forth in this Agreement, is willing to permit Licensee to use the Trademarks for the Licensed Use.

NOW, THEREFORE, in consideration of the above premises, the mutual covenants set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Section 1 LICENSE

1.1 Scope of License. Subject to the terms and conditions set forth in this Agreement, Licensor grants to Licensee a non-exclusive, non-transferable, royalty-free license to use the Trademarks in connection with the Licensed Use throughout the United States of America. Licensee shall make no other use of the Trademarks.

1.2 Non-Assignment. Licensee acknowledges and agrees that the rights granted to Licensee by and obtained by Licensee as a result of or in connection with this Agreement are license rights only, and nothing contained in this Agreement constitutes or shall be construed to be an assignment of any or all of Licensor's rights in the Trademarks.

Section 2 LICENSOR'S CONTROL

In order to protect and preserve Licensor's rights in the Trademarks, Licensee understands, acknowledges, and agrees that (i) prior Licensee's use of the Trademarks in connection with the Licensed Use, Licensee shall obtain Licensor's approval of all

aspects of such use, providing samples, mock-ups or the like at Licensee's sole cost; and (ii) once Licensee's use of the Trademarks in connection with the Licensed Use is initially approved by Licenser, any subsequent alteration, modification, or change in such use must be reviewed and approved by Licenser prior to implementation of such alteration, modification, or change at Licensee's sole cost.

Section 3 USE OF THE TRADEMARKS

3.1 Trademark Format. Licenser retains the right to specify, from time to time, the format in which Licensee shall use and display the Trademarks, and Licensee shall only use or display the Trademarks in a format approved by Licenser.

3.2 Proper Notice and Acknowledgment. Every use of the Trademarks by Licensee shall incorporate in an appropriate manner the "TM" symbol as approved by Licenser. Should the Trademarks become registered marks, Licensee shall incorporate in an appropriate matter the "®" symbol as approved by Licenser.

3.3 Impairment of Licenser's Rights. Licensee shall not at any time, whether during or after the term of this Agreement, do or cause to be done any act or thing challenging, contesting, impairing, invalidating, or tending to impair or invalidate any of Licenser's rights in the Trademarks or any registrations derived from such rights.

3.4 Licenser's Rights and Remedies. Licensee acknowledges and agrees that Licenser has, shall retain, and may exercise, both during the term of this Agreement and thereafter, all rights and remedies available to Licenser, whether derived from this Agreement, from statute, or otherwise, as a result of or in connection with Licensee's breach of this Agreement, misuse of the Trademarks, or any other use of the Trademarks by Licensee which is not expressly permitted by this Agreement.

Section 4 TERM AND TERMINATION

4.1 Term. The initial term of this Agreement shall be for one (1) year from the Effective Date and this Agreement shall automatically renew for one month renewal terms at the end of the initial term or any renewal term; provided, however, that either party may terminate this Agreement, with or without cause, by delivering written notice of termination to the other party, and, unless a later date is specified in such notice, termination shall be effective thirty (30) days after the date such notice is given.

4.2 Termination for Cause. Notwithstanding the provisions of Section 4.1 of this Agreement, this Agreement and all rights granted hereby, including but not limited to Licensee's right to use the Trademarks, shall automatically terminate without notice from Licenser if (i) Licensee attempts to assign, sub-license, transfer or otherwise convey, without first obtaining Licenser's written consent, any of the rights granted to Licensee by or in connection with this Agreement; (ii) Licensee fails to obtain Licenser's approval of Licensee's use of the Trademarks in accordance with Section 2 of this Agreement; (iii)

Licensee uses the Trademarks in a manner in violation of, or otherwise inconsistent with, the restrictions imposed by or in connection with Section 3 of this Agreement; or (iv) Licensee uses the Trademarks in a manner not expressly permitted by this Agreement.

4.3 Effect of Termination. All rights granted by this Agreement, including, without limitation, Licensee's right to use the Trademarks, shall expire upon termination of this Agreement, and upon termination Licensee shall immediately cease and desist from all further use of the Trademarks.

Section 5 LICENSE FEE

No license fee shall be due in connection with this Agreement.

Section 6 MISCELLANEOUS

6.1 Assignment. Licensee shall not assign, sublicense, transfer, or otherwise convey Licensee's rights or obligations under this Agreement without Licensor's prior written consent. Licensee shall indemnify and hold harmless Licensor against all liability, costs, and expenses, including but not limited to a reasonable attorneys' fee, arising out of or in connection with claims relating to an attempted assignment, sublicense, transfer, or other conveyance of Licensee's rights and obligations.

6.2 Entire Agreement. This Agreement supersedes all previous agreements, understandings, and arrangements between the parties, whether oral or written, and constitutes the entire agreement between the parties.

6.3 Amendments. This Agreement may not be modified, amended, altered, or supplemented except by an agreement in writing executed by the parties hereto.

6.4 Waivers. The waiver by either party of a breach or other violation of any provision of this Agreement shall not operate as, or be construed to be, a waiver of any subsequent breach of the same or other provision of this Agreement.

6.5 Notice. Unless otherwise provided herein, any notice, demand, or communication required, permitted, or desired to be given hereunder shall be in writing and shall be delivered by hand, by telex or telecopy, by facsimile, or by registered or prepaid certified mail through the United States postal service, return receipt requested, addressed as follows:

If to Licensor: Jeff Brown, 8321 S. 8th St., Broken Arrow, OK, 74801

If to Licensee: Patriot Guard Riders, Inc., Winters, King & Associates, Inc., 2448 East 81st Street, Suite 5900, Tulsa, OK 74137-4259, or to such other address, and to the attention of such other persons, agents or officers as either party may designate by written notice. Any notice so addressed and mailed shall be deemed duly given three (3) days

after deposit in the United States mail, and if delivered by hand, shall be deemed given when delivered, and if telecopied, telexed, or sent by facsimile, shall be deemed given on the first business day immediately following transmittal.

6.6 Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original, but all of which together shall constitute one and the same Agreement.

6.7 Articles and Other Headings. The articles and other headings contained in this Agreement are for reference purposes only, and shall not affect in any way the meaning or interpretation of the terms of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first set forth above.

LICENSOR:

JEFF BROWN

DATE

LICENSEE: PATRIOT GUARD RIDERS, INC.

BY

NAME

DATE

IN THE UNITED STATE PATENT & TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

JEFF BROWN,

Opposer,

v.

PATRIOT GUARD RIDERS, INC.,

Applicant.

)
) OPPOSITION NO.: 91181448
)
) TRADEMARK: PATRIOT GUARD
) RIDERS AND DESIGN
)
) APPLICATION NO.: 77/040379
)
) DATE FILED: NOVEMBER 9, 2006
)
)

EXHIBIT 31
IN SUPPORT OF OPPOSER'S MOTION FOR SUMMARY JUDGMENT

Trademark/Service Mark Application, Principal Register

Serial Number: 77383586

Filing Date: 01/29/2008

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	77383586
MARK INFORMATION	
*MARK	<u>PATRIOT GUARD RIDERS</u>
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	PATRIOT GUARD RIDERS
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.
REGISTER	Principal
APPLICANT INFORMATION	
*OWNER OF MARK	Patriot Guard Riders, Inc.
*STREET	2448 E. 81st Street, Suite 5900
*CITY	Tulsa
*STATE (Required for U.S. applicants)	Oklahoma
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. applicants only)	74137-4259
PHONE	312-704-1890
FAX	312-704-8023
EMAIL ADDRESS	ptodocket@trexlaw.com
LEGAL ENTITY INFORMATION	

TYPE	corporation
STATE/COUNTRY OF INCORPORATION	Oklahoma
GOODS AND/OR SERVICES AND BASIS INFORMATION	
*INTERNATIONAL CLASS	006
*IDENTIFICATION	Metal license plates
FILING BASIS	SECTION 1(a)
FIRST USE ANYWHERE DATE	At least as early as 12/09/2005
FIRST USE IN COMMERCE DATE	At least as early as 12/09/2005
SPECIMEN FILE NAME(S)	<u>\\TICRS2\EXPORT15\773\835</u> <u>\77383586\xml1\APP0003.JP G</u>
SPECIMEN DESCRIPTION	Scanned photograph of mark applied to the goods
*INTERNATIONAL CLASS	014
*IDENTIFICATION	Ornamental pins; commemorative coins
FILING BASIS	SECTION 1(a)
FIRST USE ANYWHERE DATE	At least as early as 12/14/2005
FIRST USE IN COMMERCE DATE	At least as early as 12/14/2005
SPECIMEN FILE NAME(S)	<u>\\TICRS2\EXPORT15\773\835</u> <u>\77383586\xml1\APP0004.JP G</u>
SPECIMEN DESCRIPTION	Scanned photograph of mark applied to the goods
*INTERNATIONAL CLASS	024
*IDENTIFICATION	Cloth banners; fabric flags
FILING BASIS	SECTION 1(a)
FIRST USE ANYWHERE DATE	At least as early as 11/29/2005
FIRST USE IN COMMERCE DATE	At least as early as 11/29/2005
SPECIMEN FILE NAME(S)	<u>\\TICRS2\EXPORT15\773\835</u> <u>\77383586\xml1\APP0005.JP G</u>
SPECIMEN DESCRIPTION	Scanned photograph of mark applied to the goods
*INTERNATIONAL CLASS	025

*IDENTIFICATION	Hats; short-sleeved and long-sleeved t-shirts; sweatshirts; doo-rags
FILING BASIS	SECTION 1(a)
FIRST USE ANYWHERE DATE	At least as early as 12/08/2005
FIRST USE IN COMMERCE DATE	At least as early as 12/08/2005
SPECIMEN FILE NAME(S)	<u>\\TICRS2\EXPORT15\773\835\77383586\xml1\APP0006.JP G</u>
SPECIMEN DESCRIPTION	Scanned photograph of mark applied to the goods
*INTERNATIONAL CLASS	026
*IDENTIFICATION	Embroidered patches for clothing; armbands
FILING BASIS	SECTION 1(a)
FIRST USE ANYWHERE DATE	At least as early as 12/23/2005
FIRST USE IN COMMERCE DATE	At least as early as 12/23/2005
SPECIMEN FILE NAME(S)	<u>\\TICRS2\EXPORT15\773\835\77383586\xml1\APP0007.JP G</u>
SPECIMEN DESCRIPTION	Scanned photograph of mark applied to the goods
*INTERNATIONAL CLASS	045
*IDENTIFICATION	Organizing and conducting support groups in the field of combat veterans and their families
FILING BASIS	SECTION 1(a)
FIRST USE ANYWHERE DATE	At least as early as 11/09/2005
FIRST USE IN COMMERCE DATE	At least as early as 11/09/2005
SPECIMEN FILE NAME(S)	<u>\\TICRS2\EXPORT15\773\835\77383586\xml1\APP0008.JP G</u>
SPECIMEN DESCRIPTION	Printout of web site page
ATTORNEY INFORMATION	
NAME	James R. Foley
ATTORNEY DOCKET NUMBER	2569/47154/2
FIRM NAME	Trexler, Bushnell, Giangiorgi, Blackstone & Marr, Ltd

STREET	105 W. Adams, 36th Floor
CITY	Chicago
STATE	Illinois
COUNTRY	United States
ZIP/POSTAL CODE	60603
PHONE	312-704-1890
FAX	312-704-8023
EMAIL ADDRESS	ptodocket@trexlaw.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
OTHER APPOINTED ATTORNEY	David J. Marr
CORRESPONDENCE INFORMATION	
NAME	James R. Foley
FIRM NAME	Trexler, Bushnell, Giangiorgi, Blackstone & Marr, Ltd
STREET	105 W. Adams, 36th Floor
CITY	Chicago
STATE	Illinois
COUNTRY	United States
ZIP/POSTAL CODE	60603
PHONE	312-704-1890
FAX	312-704-8023
EMAIL ADDRESS	ptodocket@trexlaw.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
FEE INFORMATION	
NUMBER OF CLASSES	6
FEE PER CLASS	325
*TOTAL FEE DUE	1950
*TOTAL FEE PAID	1950
SIGNATURE INFORMATION	

SIGNATURE	/james r. foley/
SIGNATORY'S NAME	James R. Foley
SIGNATORY'S POSITION	Attorney of record
DATE SIGNED	01/29/2008

PTO Form 1478 (Rev 9/2006)
OMB No. 0651-0009 (Exp 12/31/2008)

Trademark/Service Mark Application, Principal Register

Serial Number: 77383586

Filing Date: 01/29/2008

To the Commissioner for Trademarks:

MARK: PATRIOT GUARD RIDERS (Standard Characters, see mark)

The literal element of the mark consists of PATRIOT GUARD RIDERS.

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, Patriot Guard Riders, Inc., a corporation of Oklahoma, having an address of

2448 E. 81st Street, Suite 5900

Tulsa, Oklahoma 74137-4259

United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended.

International Class 006: Metal license plates

Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, or the applicant's predecessor in interest used the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended.

In International Class 006, the mark was first used at least as early as 12/09/2005, and first used in commerce at least as early as 12/09/2005, and is now in use in such commerce. The applicant is submitting one specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) Scanned photograph of mark applied to the goods.

Specimen File1

International Class 014: Ornamental pins; commemorative coins

Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, or the applicant's predecessor in interest used the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended.

In International Class 014, the mark was first used at least as early as 12/14/2005, and first used in commerce at least as early as 12/14/2005, and is now in use in such commerce. The applicant is submitting one specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) Scanned photograph of mark applied to the goods.

Specimen File1

International Class 024: Cloth banners; fabric flags

Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, or the applicant's predecessor in interest used the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended.

In International Class 024, the mark was first used at least as early as 11/29/2005, and first used in commerce at least as early as 11/29/2005, and is now in use in such commerce. The applicant is submitting one specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) Scanned photograph of mark applied to the goods.

Specimen File1

International Class 025: Hats; short-sleeved and long-sleeved t-shirts; sweatshirts; doo-rags

Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, or the applicant's predecessor in interest used the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended.

In International Class 025, the mark was first used at least as early as 12/08/2005, and first used in commerce at least as early as 12/08/2005, and is now in use in such commerce. The applicant is submitting one specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) Scanned photograph of mark applied to the goods.

Specimen File1

International Class 026: Embroidered patches for clothing; armbands

Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, or the applicant's predecessor in interest used the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended.

In International Class 026, the mark was first used at least as early as 12/23/2005, and first used in commerce at least as early as 12/23/2005, and is now in use in such commerce. The applicant is submitting one specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) Scanned photograph of mark applied to the goods.

Specimen File1

International Class 045: Organizing and conducting support groups in the field of combat veterans and their families

Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, or the applicant's predecessor in interest used the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended.

In International Class 045, the mark was first used at least as early as 11/09/2005, and first used in commerce at least as early as 11/09/2005, and is now in use in such commerce. The applicant is submitting one specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) Printout of web site page.

Specimen File1

The applicant hereby appoints James R. Foley and David J. Marr of Trexler, Bushnell, Giangiorgi, Blackstone & Marr, Ltd
105 W. Adams, 36th Floor
Chicago, Illinois 60603
United States

to submit this application on behalf of the applicant. The attorney docket/reference number is 2569/47154/2.

Correspondence Information: James R. Foley

105 W. Adams, 36th Floor
Chicago, Illinois 60603
312-704-1890(phone)
312-704-8023(fax)
ptodocket@trexlaw.com (authorized)

A fee payment in the amount of \$1950 has been submitted with the application, representing payment for 6 class(es).

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce;

to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /james r. foley/ Date Signed: 01/29/2008

Signatory's Name: James R. Foley

Signatory's Position: Attorney of record

RAM Sale Number: 2982

RAM Accounting Date: 01/30/2008

Serial Number: 77383586

Internet Transmission Date: Tue Jan 29 18:09:21 EST 2008

TEAS Stamp: USPTO/BAS-67.36.193.194-2008012918092131

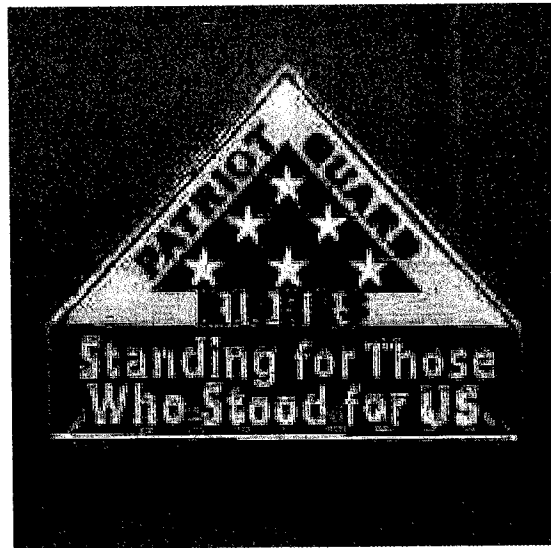
9546-77383586-4002eded1ba5ee99cd3831b5b4

be564597-DA-2982-20080129165750856196

PATRIOT GUARD RIDERS

Standing for Those Who Stood for US

● PATRIOT GUARD RIDERS ●





Streamline for Home
With Standard Motor Oil





Standing for Those
Who Stood for US



esday, January 29, 2008

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Fallen Warrior Scholarship
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Help on the HomeFront
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PGR Gear
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Our Mission

Patriot Guard Riders Mission Statement

The Patriot Guard Riders is a diverse amalgamation of riders from across the nation. We have one thing in common: motorcycles. We have an unwavering respect for those who risk their very lives for America's freedom and security. If you respect, please join us.

We don't care what you ride, what your political views are, or whether you're a "hawk" or a "dove". It is not a requirement to be a veteran. It doesn't matter where you're from or what your income is. You don't even have to ride. The only prerequisite is Respect.

Our main mission is to attend the funeral services of fallen American heroes as invited guests of the family. Each undertaking has two basic objectives.

1. Show our sincere respect for our fallen heroes, their families, and their communities.
2. Shield the mourning family and friends from interruptions created by any protestor or group of protestors.

We accomplish the latter through strictly legal and non-violent means.

IN THE UNITED STATE PATENT & TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

JEFF BROWN,

Opposer,

v.

PATRIOT GUARD RIDERS, INC.,

Applicant.

) OPPOSITION NO.: 91181448
)
) TRADEMARK: PATRIOT GUARD
) RIDERS AND DESIGN
)
) APPLICATION NO.: 77/040379
)
) DATE FILED: NOVEMBER 9, 2006
)

EXHIBIT 30
IN SUPPORT OF OPPOSER'S MOTION FOR SUMMARY JUDGMENT

ESTTA Tracking number: **ESTTA182629**

Filing date: **12/21/2007**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	JeffBrown
Granted to Date of previous extension	12/29/2007
Address	8321 S. 8th St. Broken Arrow, OK 74801 UNITED STATES
Attorney information	Rachel Blue Doerner Saunders Daniel & Anderson 320 S. Boston, Suite 500 Tulsa, OK 74103 UNITED STATES rblue@dsda.com Phone:918-591-5324

Applicant Information

Application No	77040379	Publication date	10/30/2007
Opposition Filing Date	12/21/2007	Opposition Period Ends	12/29/2007
Applicant	Patriot Guard Riders, Inc. 312 Granite Ct Windsor, CO 80550 UNITED STATES		

Goods/Services Affected by Opposition

Class 045. First Use: 2005/11/11 First Use In Commerce: 2006/06/01 All goods and services in the class are opposed, namely: Organizing and conducting support groups in the field of combat veterans and their families
--

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)

Mark Cited by Opposer as Basis for Opposition

U.S. Application No.	77041061	Application Date	11/09/2006
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	PATRIOT GUARD RIDER		
Design Mark			

Description of Mark	NONE
Goods/Services	<p>Class 006. First use: First Use: 2005/12/09 First Use In Commerce: 2005/12/09 Metal license plates</p> <p>Class 014. First use: First Use: 2005/12/14 First Use In Commerce: 2005/12/14 Ornamental pins</p> <p>Class 024. First use: First Use: 2005/11/29 First Use In Commerce: 2005/11/29 Cloth banners; Fabric flags</p> <p>Class 025. First use: First Use: 2005/12/08 First Use In Commerce: 2005/12/08 Hats; Short-sleeved or long-sleeved t-shirts</p> <p>Class 026. First use: First Use: 2005/12/23 First Use In Commerce: 2005/12/23 Embroidered patches for clothing</p> <p>Class 035. First use: First Use: 2005/10/27 First Use In Commerce: 2005/11/09 Association services, namely, promoting the interests of families of deceased military members and families of deceased veterans</p>

Attachments	<p>77041061#TMSN.jpeg (1 page)(bytes)</p> <p>884110_1.pdf (1 page)(12136 bytes)</p>
-------------	--

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/RachelBlue/
Name	Rachel Blue
Date	12/21/2007

The opposed application and that of the opposer were filed on the same day within minutes of each other. Opposer's application reflects his earlier use of the mark in commerce, at least as early as 2005. The application filed by PGR, Inc. was initiated by an individual who is no longer an officer or member of the board of directors of that group and who filed the application without authorization and with full knowledge of Mr. Brown's prior rights in the mark.

PGR, Inc., was well aware that Mr. Brown had founded the organization, still in its infancy at that point, and that Mr. Brown had prior use of the mark not only on the organization's services but also on merchandise that he produced using the name. The affidavit that PGR, Inc. knew of no other party entitled to use the mark PATRIOT GUARD RIDERS was fraudulent.

IN THE UNITED STATE PATENT & TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

JEFF BROWN,

Opposer,

v.

PATRIOT GUARD RIDERS, INC.,

Applicant.

) OPPOSITION NO.: 91181448
)
) TRADEMARK: PATRIOT GUARD
) RIDERS AND DESIGN
)
) APPLICATION NO.: 77/040379
)
) DATE FILED: NOVEMBER 9, 2006
)

EXHIBIT 29
IN SUPPORT OF OPPOSER'S MOTION FOR SUMMARY JUDGMENT

ESTTA Tracking number: **ESTTA190780**

Filing date: **02/05/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91181448
Party	Defendant Patriot Guard Riders, Inc.
Correspondence Address	James R. Foley Trexler, Bushnell, Giangiorgi, Blackston 36th Floor 105 West Adams St. Chicago, IL 60603 ptodocket@trexlaw.com
Submission	Motion to Amend/Amended Answer or Counterclaim
Filer's Name	James R. Foley
Filer's e-mail	ptodocket@trexlaw.com, jfoley@trexlaw.com, dmarr@trexlaw.com
Signature	/James R. Foley/
Date	02/05/2008
Attachments	_0205124250_001.pdf (7 pages)(249639 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Jeff Brown)	
)	
Opposer,)	
	)	Opposition No. 91181448
vs.	)	Serial No. 77/040,379
)	
Patriot Guard Riders, Inc.,)	
)	
Applicant.)	

ANSWER AND AFFIRMATIVE DEFENSES (AMENDED)

Note: This Amended “Answer And Affirmative Defenses” is being filed to correct an inadvertent error (three occurrences) discovered in the original “Answer And Affirmative Defenses” filed by Applicant on 1/30/2008. Specifically, United States Trademark Application Serial No. 77/041,061 should have been listed in Paragraphs 14, 17 and 18 where United States Trademark Application Serial No. 77/040,379 appears in those paragraphs.

Preliminary note on improper substance of Complaint filed by Opposer

Applicant notes that the Trademark Trial and Appeal Board Manual of Procedure, §309.03(a)(2) “Elements of Complaint-In General”, requires, *inter alia*, that:

The elements of a claim should be stated simply, concisely, and directly. However, the pleading should include enough detail to give the defendant fair notice of the basis for each claim.

All averments should be made in numbered paragraphs, the contents of each of which should be limited as far as practicable to a statement of a single set of circumstances. (citations omitted)

Applicant submits that Opposer’s unnumbered, two-paragraph Complaint fails to comply with the above-quoted regulations. Nevertheless, Applicant denies the multiple averments incorporated into each of the two paragraphs included in Opposer’s Complaint as being either

false and/or irrelevant to the dispositive issues involved. The specific reasons for Applicant's denials are set forth below in proper format.

1. Applicant, Patriot Guard Riders, Inc., was organized and incorporated within a few months thereafter as a not-for-profit in the State of Oklahoma on February 21, 2006. (Hereinafter, "PGR" will be used to refer to Patriot Guard Riders, Inc., and its predecessor organization, collectively).

2. The corporate filing papers name the Opposer, Jeff Brown, as an "Incorporator" and a "Director" of PGR, along with two other individuals - Mr. Jason Wallin and Mr. Kurt Mayer.

3. Opposer, Jeff Brown was named President of PGR, and also served as a Director of the Board.

4. As early as November 9, 2005, PGR began conducting organizational and support services in commerce for United States military personnel and their families who were being harassed at the funerals of fallen soldiers by religious fanatics.

5. PGR established a website on November 9, 2005 to communicate its services, and sell merchandise to help support the cause.

6. PGR merchandise could be purchased either on the main website, or at the "PGR Store", a separate website that was linked to the main website.

7. Opposer, Jeff Brown, operated the "PGR Store" website which sold merchandise associated with the PGR cause.

8. On February 13, 2006, Opposer's wife, Bonnie Brown, registered a Limited

Liability Company in the State of Oklahoma, named the "PGR Store".

9. On or around October, 2006, members of the Board of Directors of PGR obtained information indicating that, unbeknownst to PGR, revenue from the sale of PGR merchandise on the PGR Store was being diverted and retained by Opposer, Jeff Brown for his personal use (contrary to his fiduciary duty owed to PGR, and contrary to PGR's mission), and was not being turned over to PGR to further its mission. The PGR Board of Directors confronted Jeff Brown about this issue.

10. On November 6, 2006, Opposer, Jeff Brown sent an email indicating his intention to resign from his position with PGR and stated that the "PGR Store" would be closed after the current inventory was sold. At that time (and at all times since then) Jeff Brown did not object to PGR using and continuing to use the mark "Patriot Guard Riders". As such, Opposer, Jeff Brown has acquiesced to the fact that the mark "Patriot Guard Riders" belongs to PGR, and therefore this Opposition should be denied.

11. As a result of breaching his fiduciary duties owed to PGR by retaining revenue that belonged to PGR, the PGR Board voted in November, 2006, to remove Opposer, Jeff Brown, from his position as President of PGR and Director of the Board.

12. On November 9, 2006, Mr. Jason Wallin, with full authorization and on behalf of PGR, filed United States Trademark Application Serial No. 77/040,379 claiming rights to the "Patriot Guard Riders" mark on the basis of use by PGR and in the name of PGR; therefore, Applicant denies Opposer's assertion to the contrary.

13. When Applicant filed United States Trademark Application Serial No. 77/040,379, Applicant submitted a Declaration that Applicant believed that Applicant knew of no other party entitled to use the mark. This was, and is still, true. As such, Applicant denies

Opposer's assertion to the contrary that the Declaration was fraudulent.

14. On the same day, Opposer, Jeff Brown, individually, filed United States Trademark Application Serial No. 77/041,061, which also claims rights to the "Patriot Guard Riders" mark.

15. Opposer, Jeff Brown is not entitled to any individual rights in the "Patriot Guard Riders" mark. As a result of being a Director and Incorporator of PGR, any use by Opposer, Jeff Brown of the "Patriot Guard Riders" mark in connection with the "PGR Store" or otherwise inures to the benefit of the Applicant, PGR; therefore, Applicant denies Opposer's assertion to the contrary.

16. Additionally, when the public went to the PGR website and clicked on the link to purchase PGR merchandise, the public would logically assume that the PGR store was part of PGR. As such, any use of the PGR store, and the subject trademark thereon, must inure to the benefit of PGR in order to prevent confusion.

17. Applicant, PGR, has now filed a second United States Trademark Application, Serial No. 77/383,586, which broadly claims its rights in the "Patriot Guard Riders" mark and which is equivalent in scope to Opposer's United States Trademark Application Serial No. 77/041,061 with respect to the goods and services claimed, as well as the dates of first use in commerce claimed.¹

18. Applicant, PGR, respectfully requests that the board amend the current Opposition Proceeding to include Applicant's recently filed United States Trademark Application, Serial No.

¹Applicant's United States Trademark Application Serial No. 77/040,379 was prepared and filed without the assistance of an attorney and is limited in scope to composite mark and design which incorporates the "Patriot Guard Riders" mark, and seeks registration only in connection with PGR's organizational and support services.

77/383,586, as well Opposer's United States Trademark Application Serial No. 77/041,061, in order to avoid multiple Opposition Proceedings and to conserve both the Board's and the parties resources.

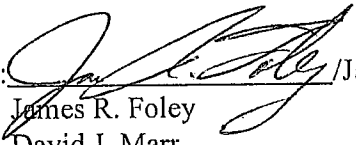
AFFIRMATIVE DEFENSES

19. Paragraphs 1-18 above are hereby incorporated herein by reference as if fully set forth again, and Applicant asserts at least the following affirmative defenses based on the facts contained therein: Unclean Hands, Fraud, Acquiescence.

Respectfully submitted,

PATRIOT GUARD RIDERS, INC.

Dated: February 5, 2008

By:  /James R. Foley/
James R. Foley
David J. Marr
Attorneys for Applicant
Trexler, Bushnell, Giangiorgi, Blackstone & Marr, Ltd.
105 W. Adams, Suite 3600
Chicago, Illinois 60603
Telephone: (312) 704-1890
Facsimile: (312) 704-8023

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing Answer and Affirmative Defenses has been sent first class mail this 5th day of February, 2008, postage pre-paid, to the following:

Rachel Blue
Doerner, Saunders, Daniel & Anderson
320 S. Boston, Suite 500
Tulsa, OK 74103

By  /James R. Foley/

IN THE UNITED STATE PATENT & TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

JEFF BROWN,

Opposer,

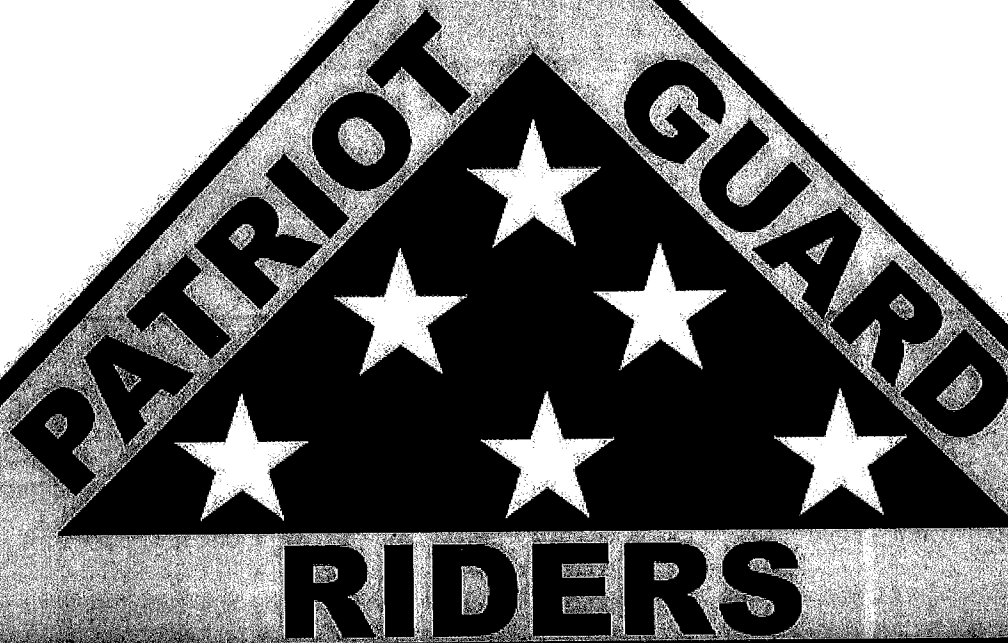
v.

PATRIOT GUARD RIDERS, INC.,

Applicant.

)
) OPPOSITION NO.: 91181448
)
) TRADEMARK: PATRIOT GUARD
) RIDERS AND DESIGN
)
) APPLICATION NO.: 77/040379
)
) DATE FILED: NOVEMBER 9, 2006
)
)

EXHIBIT 28
IN SUPPORT OF OPPOSER'S MOTION FOR SUMMARY JUDGMENT



"Riding With Respect"

IN THE UNITED STATE PATENT & TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

JEFF BROWN,

Opposer,

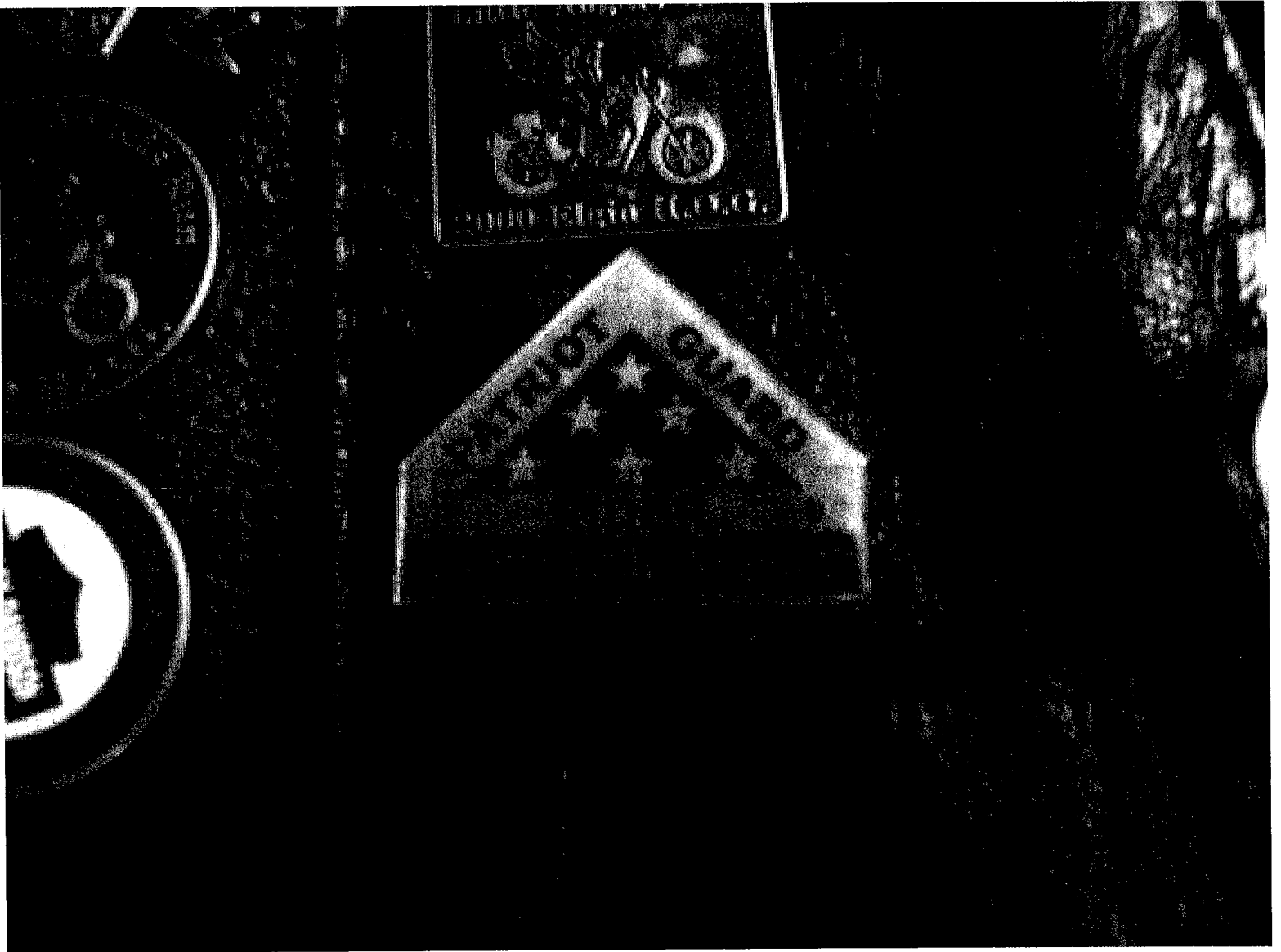
v.

PATRIOT GUARD RIDERS, INC.,

Applicant.

) OPPOSITION NO.: 91181448
)
) TRADEMARK: PATRIOT GUARD
) RIDERS AND DESIGN
)
) APPLICATION NO.: 77/040379
)
) DATE FILED: NOVEMBER 9, 2006
)

EXHIBIT 27
IN SUPPORT OF OPPOSER'S MOTION FOR SUMMARY JUDGMENT



IN THE UNITED STATE PATENT & TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

JEFF BROWN,

Opposer,

v.

PATRIOT GUARD RIDERS, INC.,

Applicant.

) OPPOSITION NO.: 91181448
)
) TRADEMARK: PATRIOT GUARD
) RIDERS AND DESIGN
)
) APPLICATION NO.: 77/040379
)
) DATE FILED: NOVEMBER 9, 2006
)

EXHIBIT 26
IN SUPPORT OF OPPOSER'S MOTION FOR SUMMARY JUDGMENT



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© 1994 by the University of Chicago

IN THE UNITED STATE PATENT & TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

JEFF BROWN,

Opposer,

v.

PATRIOT GUARD RIDERS, INC.,

Applicant.

) OPPOSITION NO.: 91181448
)
) TRADEMARK: PATRIOT GUARD
) RIDERS AND DESIGN
)
) APPLICATION NO.: 77/040379
)
) DATE FILED: NOVEMBER 9, 2006
)

EXHIBIT 25
IN SUPPORT OF OPPOSER'S MOTION FOR SUMMARY JUDGMENT

Trademark/Service Mark Application, Principal Register

TEAS Plus Application

Serial Number: 77040379

Filing Date: 11/09/2006

NOTE: Data fields with the * are mandatory under TEAS Plus. The wording "(if applicable)" appears where the field is only mandatory under the facts of the particular application.

The table below presents the data as entered.

Input Field	Entered
TEAS Plus	YES
MARK INFORMATION	
*MARK FILE NAME	\\TICRS\EXPORT2\IMAGEOUT2 \\770403\77040379\xml1\FT K0002.JPG
*SPECIAL FORM	YES
USPTO-GENERATED IMAGE	NO
LITERAL ELEMENT	Patriot Guard Riders Riding with Respect
*COLOR MARK	YES
*DESCRIPTION OF THE MARK (and Color Location, if applicable)	The mark consists of this mark has a yellow field with a blue and white folded American flag and blue text.
*COLOR(S) CLAIMED (if applicable)	yellow, blue, and white
PIXEL COUNT ACCEPTABLE	YES
PIXEL COUNT	900 x 572
APPLICANT INFORMATION	
*OWNER OF MARK	Patriot Guard Riders, Inc.
*STREET	312 Granite Ct
*CITY	Windsor
*STATE	Colorado

(Required for U.S. applicants)	
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. applicants only)	80550
PHONE	970-402-1892
EMAIL ADDRESS	jason@patriotguard.org
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
LEGAL ENTITY INFORMATION	
*TYPE	CORPORATION
*STATE/COUNTRY OF INCORPORATION	Oklahoma
GOODS AND/OR SERVICES AND BASIS INFORMATION	
*INTERNATIONAL CLASS	045
*FIRST USE ANYWHERE DATE	At least as early as 11/11/2005
*FIRST USE IN COMMERCE DATE	At least as early as 06/01/2006
*DESCRIPTION	Organizing and conducting support groups in the field of MILITARY AND MILITARY FAMILY SUPPORT
*FILING BASIS	SECTION 1(a)
*FIRST USE ANYWHERE DATE	At least as early as 11/11/2005
*FIRST USE IN COMMERCE DATE	At least as early as 06/01/2006
SPECIMEN FILE NAME(S)	\\TICRS\EXPORT2\IMAGEOUT2 \\770\403\77040379\xml1\FT K0003.JPG
SPECIMEN DESCRIPTION	this is a sample of a t-shirt that we sold to help raise money for scholarships for the families of fallen soldiers.
ADDITIONAL STATEMENTS INFORMATION	
*TRANSLATION (if applicable)	
*TRANSLITERATION (if applicable)	
*CLAIMED PRIOR REGISTRATION (if applicable)	

* CONSENT (NAME/LIKENESS) (If applicable)	
* CONCURRENT USE CLAIM (If applicable)	
CORRESPONDENCE INFORMATION	
* NAME	Patriot Guard Riders, Inc.
* FIRM NAME	Patriot Guard Riders, Inc.
* STREET	312 Granite Ct
* CITY	Windsor
* STATE (Required for U.S. applicants)	Colorado
* COUNTRY	United States
* ZIP/POSTAL CODE (Required for U.S. applicants only)	80550
* PHONE	970-402-1892
* EMAIL ADDRESS	jason@patriotguard.org
* AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
FEE INFORMATION	
NUMBER OF CLASSES	1
FEE PER CLASS	275
TOTAL FEE DUE	275
SIGNATURE INFORMATION	
* SIGNATURE	/Jason D. Wallin/
* SIGNATORY'S NAME	Jason D. Wallin
SIGNATORY'S POSITION	Treasurer, Patriot Guard Riders, Inc.
* DATE SIGNED	11/09/2006
FILING INFORMATION SECTION	
SUBMIT DATE	Thu Nov 09 13:14:12 EST 2006
TEAS STAMP	USPTO/FTK-72.250.47.100-2 0061109131412723527-77040 379-3507c3ba14ce17d9c93f0 87827a0f348e6-CC-1533-200

61109113619488470

PTO Form 1478 (Rev 9/2006)
OMB No. 0651-0009 (Exp 09/30/2008)

Trademark/Service Mark Application, Principal Register

TEAS Plus Application

Serial Number: 77040379

Filing Date: 11/09/2006

To the Commissioner for Trademarks:

MARK: Patriot Guard Riders Riding with Respect (stylized and/or with design, see mark)

The literal element of the mark consists of Patriot Guard Riders Riding with Respect. The applicant claims color as a feature of the mark, namely, yellow, blue, and white. The mark consists of this mark has a yellow field with a blue and white folded American flag and blue text.

The applicant, Patriot Guard Riders, Inc., a corporation of Oklahoma, having an address of 312 Granite Ct, Windsor, Colorado, United States, 80550, requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended.

For specific filing basis information for each item, you must view the display within the Input Table.

International Class 045: Organizing and conducting support groups in the field of MILITARY AND MILITARY FAMILY SUPPORT

If the applicant is filing under Section 1(b), intent to use, the applicant declares that it has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(b), as amended.

If the applicant is filing under Section 1(a), actual use in commerce, the applicant declares that it is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended.

If the applicant is filing under Section 44(d), priority based on foreign application, the applicant declares that it has a bona fide intention to use the mark in commerce on or in connection with the identified goods and/or services, and asserts a claim of priority based on a specified foreign application(s). 15 U.S.C. Section 1126(d), as amended.

If the applicant is filing under Section 44(e), foreign registration, the applicant declares that it has a bona

fide intention to use the mark in commerce on or in connection with the identified goods and/or services, and submits a copy of the supporting foreign registration(s), and translation thereof, if appropriate. 15 U.S.C. Section 1126(e), as amended.

Correspondence Information: Patriot Guard Riders, Inc.

312 Granite Ct

Windsor, Colorado 80550

970-402-1892(phone)

jason@patriotguard.org (authorized)

A fee payment in the amount of \$275 will be submitted with the application, representing payment for 1 class(es).

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /Jason D. Wallin/ Date: 11/09/2006

Signatory's Name: Jason D. Wallin

Signatory's Position: Treasurer, Patriot Guard Riders, Inc.

RAM Sale Number: 1533

RAM Accounting Date: 11/09/2006

Serial Number: 77040379

Internet Transmission Date: Thu Nov 09 13:14:12 EST 2006

TEAS Stamp: USPTO/FTK-72.250.47.100-2006110913141272

3527-77040379-3507c3ba14ce17d9c93f087827

a0f348e6-CC-1533-20061109113619488470



"Riding With Respect"



1917-1918

1917-1918

IN THE UNITED STATE PATENT & TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

JEFF BROWN,

Opposer,

v.

PATRIOT GUARD RIDERS, INC.,

Applicant.

) OPPOSITION NO.: 91181448

) TRADEMARK: PATRIOT GUARD
) RIDERS AND DESIGN

) APPLICATION NO.: 77/040379

) DATE FILED: NOVEMBER 9, 2006

)

EXHIBIT 24

IN SUPPORT OF OPPOSER'S MOTION FOR SUMMARY JUDGMENT



John Jacobs Jacobs <mnjjacobs@gmail.com>

Trademark applications

1 message

Tue, Oct 3, 2006 at 11:50 PM

John Jacobs <mnjjacobs@gmail.com>
To: Jeff Brown <twister@patriotguard.org>

Jeff -

At long last, I've gotten through all searching and am ready to finalize the trademark application paperwork, and I need your input.

As it stands, we can register four marks - 1. the words "PATRIOT GUARD RIDER", 2. the words "Riding with Respect", 3. the logo including the folded flag/stars, "Patriot Guard Rider" around it and "Riding with Respect" below and 4. "Scooter Sissy". Registration gives us legal rights to protect the phrases and the logo from unauthorized use. The registrations also protect against confusingly similar uses like the unauthorized vest design from ebay, and maybe splinter groups (if the name or logo they use is similar to the non-descriptive parts of the marks).

The first three registrations can be made in up to 6 classes of "goods and services" - 1. Association services (which is the trademark office lingo for the mission rides and other core activities), 2. Clothes, 3. Patches, 4. Flags and banners, 5. Pins and 6. License plates. The Scooter Sissy mark can be registered for Patches, and maybe for Association services (if we can show that the name is used in connection with a mission (like advertising it)). However, each class, for each mark will cost either \$325 or \$375, so it could run upwards of \$6500 in government fees. I don't know what your budget will permit, but that seems like a lot to me.

I think we can safely protect the PGR identity by registering the words "PATRIOT GUARD RIDER" in all 6 classes, and the others in association services (and Scooter Sissy in the Patches class). That would be between \$3250 and \$3750, all together. The only downside of that approach is that someone else could use the unregistered mark or something "confusingly similar" (like a copycat logo without the PGR words, or just "Riding with Respect") in a state where the PGR marks haven't been sold on the particular class of goods first (not that there are many anymore, I suspect). That's because whoever sells goods with a particular mark first gets the right to prevent others from using it in that state/area.

The minimal approach would be to register only "Patriot Guard Rider" and maybe "Riding with Respect" for Association services. Assuming we've sold all the classes of goods into most of the 50 states, we could rely on state/common law in case someone tried to sell unauthorized (infringing) goods, but that would require legal help local to the infringer to really do anything to stop them. With federal registration, state law (and local lawyers) aren't nearly as necessary.

Please let me know how you'd like to proceed, and feel free to call or reply with any questions. My apologies for taking so long to get to this project.

John Jacobs

PGR 003140

EXHIBIT 23
IN SUPPORT OF OPPOSER'S MOTION FOR SUMMARY JUDGMENT



John Jacobs Jacobs <mnjjacobs@gmail.com>

Trademark filings

1 message

John Jacobs <mnjjacobs@gmail.com>

Thu, Mar 9, 2006 at 9:25 AM

To: Jeff Brown <jeffbrown@valornet.com>

Jeff - I know you're busy, so just a reminder on this - I'm holding off completing the trademark and copyright paperwork to see if incorporation is in the near future.

Also, given the recent exposure, it might be prudent for you to think about a couple more things around protecting the name and logo.

The easy one is that PGR should start using the trademark symbol (the little "TM", not the R-in-a-circle) on the website and other printed matter (like PGR Store items). Once the trademark is registered, the "TM" can be replaced with the registered trademark symbol, which is the R-in-a-circle, or sometimes "(R)". The "TM" just lets the world know that the owner considers the name and logo to be trademarks. The (R) has legal effect if anyone ever misuses it, but that has to wait through the government process.

The second thing to consider is registration of a "collective trademark" which works a little differently than registering the name or logo. The trademark/servicemark registration protects the connection between you (or the corporation, if it goes that way) and the name/logo. A collective mark lets the owner control what people call themselves "Patriot Guard Riders" and take action if unauthorized people try to use the designation. The best example I can think of is "Realtor". The idea is that the collective mark owner has some rules for admitting and controlling members, so they have legal protection against people who use the designation without following the rules. I'm not aware of a pressing need for the collective mark at the moment, unless there are actual concerns about people improperly calling themselves members, and reflecting badly on PGR or using claimed membership for their own purposes (like a political candidate or business). Even if there aren't any known problems, should things continue to grow quickly it might be worth keeping in mind.

John Jacobs

On 3/5/06, Jeff Brown <jeffbrown@valornet.com> wrote:

John,
Thank you sir.

Jeff Brown
8321 S. 8th St.
Broken Arrow, OK 74801

I'll try to give you a call tomorrow or Tuesday...just got back from 700 miles on a mission

PGR 003094

IN THE UNITED STATE PATENT & TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

JEFF BROWN,

Opposer,

v.

PATRIOT GUARD RIDERS, INC.,

Applicant.

) OPPOSITION NO.: 91181448
)
) TRADEMARK: PATRIOT GUARD
) RIDERS AND DESIGN
)
) APPLICATION NO.: 77/040379
)
) DATE FILED: NOVEMBER 9, 2006
)

EXHIBIT 22
IN SUPPORT OF OPPOSER'S MOTION FOR SUMMARY JUDGMENT



John Jacobs Jacobs <mnjjacobs@gmail.com>

Trademark License

5 messages


John Jacobs <mnjjacobs@gmail.com>
To: Jeff Brown <twister@patriotguard.org>

Wed, Apr 26, 2006 at 9:46 PM

Jeff -

Attached is a license agreement as we discussed. You can use it for situations like the memorial rockers. It has all the required legal pieces and I've highlighted in yellow the items that have to be filled in for each user of the names and/or logo.

It gives you approval of the goods/services and any changes, so you can make sure they meet your standards. It provides for collecting a license fee or not (and I've noted that the fee could be payable to a PGR entity - your tax advisor should think about that one). You would set the fee, if any and send the document to the person who wants to use the names/logo and they'd fill in names, etc., and sign two copies of it first. You sign second, keeping one copy and returning one.

As soon as possible, you should license the three corporations as users, with fairly broad descriptions of the Permitted Use. Everyone else gets as narrow a description as possible. Odd as it seems, you can sign for both you and as an officer of Patriot Guard Riders, Inc. 

Let me know if you have any questions, or think I missed anything. The agreement should work in this form until the marks are federally registered.

 PGR TM License.doc
37K

Jeff Brown <twister@patriotguard.org>
To: John Jacobs <mnjjacobs@gmail.com>

Fri, Apr 28, 2006 at 10:23 AM

John,

Thank you sir. As soon as I get my haed above water I'll review it and contact you should I have any additional questions. Briefly, I've been contacted by a couple of members who want to have their bikes painted with the PGR logo and name. I don't have a problem with it, should I send them one of these agreements to sign?

Thanks,
Jeff

From: John Jacobs [mailto:mnjjacobs@gmail.com]
Sent: Wed 4/26/2006 8:46 PM

PGR 003095

To: Jeff Brown
Subject: Trademark License

[Quoted text hidden]

John Jacobs <mnjjacobs@gmail.com>
To: Jeff Brown <twister@patriotguard.org>

Fri, Apr 28, 2006 at 1:54 PM

Technically, it would be appropriate to license that kind of use. There's not a huge risk, so I don't think it would be horrible if folks did those things without permission, but if they ask, it would be good to have a consistent response.

From the trademark perspective, a professional bike painter is the biggest concern since he's making a commercial use - the agreement would work with him (and you'd limit the Licensed Use in the document to one certain customer's bike). If the painter isn't doing the work for money, it's technically a trademark law matter, but hard to get excited about. The bike owner isn't really doing anything trademark law covers.

From the copyright perspective (which the form also covers), both the painter and the biker owner require a license to copy and display the logo. For a non-pro painter or DIYer legal permission could be accomplished with a simple letter or email that says:

"I, Jeff Brown, owner of the rights to the Patriot Guard Rider logo, hereby grant [NAME] a non-exclusive, perpetual (for the duration of the applicable copyright) license to (a) reproduce the logo on [PERSON'S BIKE, etc.], and (b) to display it publicly."

John Jacobs

[Quoted text hidden]


John Jacobs <mnjjacobs@gmail.com>
To: Jeff Brown <twister@patriotguard.org>

Wed, Nov 8, 2006 at 9:40 AM

Jeff -

A few things -

1. The license agreement is attached. If you're giving permission on "Scooter Sissy" or "Gathering of the Guard" that would replace the PGR items in the first "WHEREAS" clause. The other "fill in" items are highlighted with yellow.

2. If you haven't put a license in place to allow PGR, Inc. to use the trademarks, we should get that done ASAP. Let me know if you need any assistance with it. 

3. For the link that won't cooperate - you should be able to get to the page as follows:
A. go to <http://www.uspto.gov>

PGR 003096

- B. click Trademarks on the upper left
- C. Click the File Online link that appears under Trademarks
- D. On the right side, click the "Apply for a NEW mark" link
- E. Click the "Trademark/Service mark Application, Principal Register" link (the first box on the page)
- F. Click the "TEAS Plus Form" button and then the "CONTINUE" button at the bottom of the page - that takes you to the page where the not-working link should have.

4. Sorry to see that you're stepping down as Executive Director. I think you've done an excellent job of making PGR work, and reaching the right decisions many, many times. I'm happy to keep working with you on this stuff for as long as it makes sense.

John Jacobs

[Quoted text hidden]

 PGR TM License.doc
37K

Jeff Brown <twister@patriotguard.org>
To: John Jacobs <mnjjacobs@gmail.com>

Thu, Nov 9, 2006 at 1:09 PM

John,
Please call me as soon as you can. URGENT
Thanks,
Jeff
918-449-1652

From: John Jacobs [mailto:mnjjacobs@gmail.com]
Sent: Wed 11/8/2006 7:40 AM
To: Jeff Brown
Subject: Fwd: Trademark License

[Quoted text hidden]

PGR 003097

TRADEMARK LICENSE AGREEMENT

THIS TRADEMARK LICENSE AGREEMENT ("Agreement") is made and entered into effective as of the date signed by Licensor below (the "Effective Date") by and between Jeff Brown, an individual ("Licensor"), and [NAME], a [STATE] [individual/corporation/partnership/etc.] ("Licensee").

WHEREAS, Licensor is the owner of the trademark, trade name and copyright rights in "PATRIOT GUARD RIDER", "PATRIOT GUARD RIDERS", "RIDING WITH RESPECT" and the PGR logo (some of which may be the subject of applications filed with the United States Patent and Trademark Office) ("Trademarks"); and

WHEREAS, Licensee desires to use the Trademarks, in connection with Licensee's [SPECIFIC ACTIVITY OR SPECIFIC PRODUCT DESCRIPTION] (the "Licensed Use") and arising out of or related to the goods and services associated with the Trademarks use in commerce; and

WHEREAS, Licensor, subject to the terms and conditions set forth in this Agreement, is willing to permit Licensee to use the Trademarks for the Licensed Use.

NOW, THEREFORE, in consideration of the above premises, the mutual covenants set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Section 1 LICENSE

1.1 Scope of License. Subject to the terms and conditions set forth in this Agreement, Licensor grants to Licensee a non-exclusive, non-transferable, royalty-free license to use the Trademarks in connection with the Licensed Use throughout the United States of America. Licensee shall make no other use of the Trademarks.

1.2 Non-Assignment. Licensee acknowledges and agrees that the rights granted to Licensee by and obtained by Licensee as a result of or in connection with this Agreement are license rights only, and nothing contained in this Agreement constitutes or shall be construed to be an assignment of any or all of Licensor's rights in the Trademarks.

Section 2 LICENSOR'S CONTROL

In order to protect and preserve Licensor's rights in the Trademarks, Licensee understands, acknowledges, and agrees that (i) prior Licensee's use of the Trademarks in connection with the Licensed Use, Licensee shall obtain Licensor's approval of all aspects of such use, providing samples, mock-ups or the like at Licensee's sole cost; and (ii) once Licensee's use of the Trademarks in connection with the Licensed Use is initially approved by Licensor, any subsequent alteration, modification, or change in such use must be reviewed and approved by Licensor prior to implementation of such alteration, modification, or change at Licensee's sole cost.

Section 3 USE OF THE TRADEMARKS

3.1 Trademark Format. Licensor retains the right to specify, from time to time, the format in which Licensee shall use and display the Trademarks, and Licensee shall only use or display the Trademarks in a format approved by Licensor.

3.2 Proper Notice and Acknowledgment. Every use of the Trademarks by Licensee shall incorporate in an appropriate manner the "TM" symbol as approved by Licensor.

3.3 Impairment of Licensor's Rights. Licensee shall not at any time, whether during or after the term of this Agreement, do or cause to be done any act or thing challenging, contesting, impairing, invalidating, or tending to impair or invalidate any of Licensor's rights in the Trademarks or any registrations derived from such rights.

3.4 Licensor's Rights and Remedies. Licensee acknowledges and agrees that Licensor has, shall retain, and may exercise, both during the term of this Agreement and thereafter, all rights and remedies available to Licensor, whether

derived from this Agreement, from statute, or otherwise, as a result of or in connection with Licensee's breach of this Agreement, misuse of the Trademarks, or any other use of the Trademarks by Licensee which is not expressly permitted by this Agreement.

Section 4 TERM AND TERMINATION

4.1 Term. The term of this Agreement shall be for one (1) year from the Effective Date; provided, however, that either party may terminate this Agreement, with or without cause, by delivering written notice of termination to the other party, and, unless a later date is specified in such notice, termination shall be effective thirty (30) days after the date such notice is given.

4.2 Termination for Cause. Notwithstanding the provisions of Section 4.1 of this Agreement, this Agreement and all rights granted hereby, including but not limited to Licensee's right to use the Trademarks, shall automatically terminate without notice from Licensor if (i) Licensee attempts to assign, sub-license, transfer or otherwise convey, without first obtaining Licensor's written consent, any of the rights granted to Licensee by or in connection with this Agreement; (ii) Licensee fails to obtain Licensor's approval of Licensee's use of the Trademarks in accordance with Section 2 of this Agreement; (iii)

Licensee uses the Trademarks in a manner in violation of, or otherwise inconsistent with, the restrictions imposed by or in connection with Section 3 of this Agreement; or (iv) Licensee uses the Trademarks in a manner not expressly permitted by this Agreement.

4.3 Effect of Termination. All rights granted by this Agreement, including, without limitation, Licensee's right to use the Trademarks, shall expire upon termination of this Agreement, and upon termination Licensee shall immediately cease and desist from all further use of the Trademarks.

Section 5 LICENSE FEE

No license fee shall be due in connection with this Agreement.

OR

A license fee of [flat fee/per unit/etc.] shall be due and payable to [Licensor/PGR entity] [upon signing this Agreement/monthly/etc.].

Section 6 MISCELLANEOUS

6.1 Assignment. Licensee shall not assign, sublicense, transfer, or otherwise convey Licensee's rights or obligations under this Agreement without Licensor's prior written consent. Licensee shall indemnify and hold harmless Licensor against all liability, costs, and expenses, including but not limited to a reasonable attorneys' fee, arising out of or in connection with claims relating to an attempted assignment, sublicense, transfer, or other conveyance of Licensee's rights and obligations.

6.2 Applicable Law. This Agreement shall be interpreted, construed, and enforced pursuant to, and in accordance with, the laws of the State of Oklahoma.

6.3 Entire Agreement. This Agreement supersedes all previous agreements, understandings, and arrangements between the parties, whether oral or written, and constitutes the entire agreement between the parties.

6.4 Amendments. This Agreement may not be modified, amended, altered, or supplemented except by an agreement in writing executed by the parties hereto.

6.5 Waivers. The waiver by either party of a breach or other violation of any provision of this Agreement shall not operate as, or be construed to be, a waiver of any subsequent breach of the same or other provision of this Agreement.

PGR 003099

6.6 NOTICE. Unless otherwise provided herein, any notice, demand, or communication required, permitted, or desired to be given hereunder shall be in writing and shall be delivered by hand, by telex or telecopy, by facsimile, or by registered or prepaid certified mail through the United States postal service, return receipt requested, addressed as follows:

If to Licensor: Jeff Brown, PGR Executive Director, 8321 S. 8th St., Broken Arrow, OK, 74801

If to Licensee: NAME, ADDRESS, FAX

or to such other address, and to the attention of such other persons, agents or officers as either party may designate by written notice. Any notice so addressed and mailed shall be deemed duly given three (3) days after deposit in the United States mail, and if delivered by hand, shall be deemed given when delivered, and if telecopied, telexed, or sent by facsimile, shall be deemed given on the first business day immediately

following transmittal.

6.7 Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original, but all of which together shall constitute one and the same Agreement.

6.8 Articles and Other Headings. The articles and other headings contained in this Agreement are for reference purposes only, and shall not affect in any way the meaning or interpretation of the terms of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first set forth above.

LICENSOR:

JEFF BROWN

DATE

LICENSEE:

BY

NAME

DATE

IN THE UNITED STATE PATENT & TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

JEFF BROWN,

Opposer,

v.

PATRIOT GUARD RIDERS, INC.,

Applicant.

)
) OPPOSITION NO.: 91181448
)
) TRADEMARK: PATRIOT GUARD
) RIDERS AND DESIGN
)
) APPLICATION NO.: 77/040379
)
) DATE FILED: NOVEMBER 9, 2006
)

EXHIBIT 21
IN SUPPORT OF OPPOSER'S MOTION FOR SUMMARY JUDGMENT



John Jacobs Jacobs <mnjjacobs@gmail.com>

Message from Twister on Patriot Guard Riders

3 messages

jeffbrown@valornet.com <jeffbrown@valornet.com>
To: mnjjacobs@gmail.com

Sat, Feb 4, 2006 at 10:20 PM

From: Twister Subject: PGR assistance ----- Johnny, What would you charge me to trademark (or whatever needs to be done) the name Patriot Guard Riders and our logo? Thanks, Jeff jeffbrown@valornet.com -----
Patriot Guard Riders <http://www.patriotguard.org>

John Jacobs <mnjjacobs@gmail.com>
To: "jeffbrown@valornet.com" <jeffbrown@valornet.com>

Mon, Feb 6, 2006 at 10:07 AM

Jeff -

I'd be happy to get the name/logo registered, no charge for my time. There are some government fees involved - \$750 to register for both nonprofit activities and for PGR store goods, possibly more if there are objections filed or to register both the words and the logo in both categories.

I have to get formal permission from my employer - mainly a formality, but I'm in-house, so I'm not in the business of taking clients.

It's probably easier to go through the process and some of the choices to be made by phone. My office number is 484-582-5604 - feel free to call or reply with a number and some times that are good to reach you.

John Jacobs
(johnnysquire)

[Quoted text hidden]

Jeff Brown <jeffbrown@valornet.com>
To: John Jacobs <mnjjacobs@gmail.com>

Tue, Feb 7, 2006 at 1:45 AM

John,
You are a true gentleman...I have a meeting tomorrow with an accountant. I'll touch base later this week.
Thanks,
Jeff

[Quoted text hidden]

PGR 003093

IN THE UNITED STATE PATENT & TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

JEFF BROWN,

Opposer,

v.

PATRIOT GUARD RIDERS, INC.,

Applicant.

) OPPOSITION NO.: 91181448
)
) TRADEMARK: PATRIOT GUARD
) RIDERS AND DESIGN
)
) APPLICATION NO.: 77/040379
)
) DATE FILED: NOVEMBER 9, 2006
)

EXHIBIT 10
IN SUPPORT OF OPPOSER'S MOTION FOR SUMMARY JUDGMENT

From: Wallin Jason D. <jasonw@geoveritas.com>
Sent: Wednesday, November 9, 2005 8:19 PM
To: Jeff Brown <jeffbrown@valornet.com>
Subject: RE: PGR - Most recent pickets from WBC site

Btw you now own patriotguard.org domain name and I can host it for you for free.

Jason Wallin, CISSP
John Deere Agri Services
Fort Collins, CO

970-266-4625
jasonw@geoveritas.com

-----Original Message-----

From: Jeff Brown [mailto:jeffbrown@valornet.com]
Sent: Wednesday, November 09, 2005 6:41 PM
To: Husky; Wallin Jason D.
Subject: PGR - Most recent pickets from WBC site

Hey Guys,
Preacher just sent me your email address to put you on the PGR notification list. Either of you near Beatrice, Nebraska? Let me know and I'll send you details on the ride for Spc. Howe.
Welcome aboard...a couple of things. If you know other riders that want to get involved, regardless of any organization, let me know and I'll put them on the list. Send me any information you want distributed.
Thanks,
Jeff Brown "Twister"
Broken Arrow, OK

=====

Here's what's listed, in case you've not checked their site recently.
If you know riders in these areas, regardless of any group affiliation, pass it along and encourage them to join in a Patriot Guard Ride to honor our fallen heroes and support their families.
If anyone has contact information for rides in these areas, please pass it along to me and I will see it gets out.
Thanks,
Jeff Brown "Twister"
Broken Arrow, OK

=====

WBC to picket funeral/visitation of Army Spc. Darren D. Howe - at 4 p.m. Thursday, Nov. 10, at Fox Funeral Home, 1116 N. 19th St., Beatrice, Nebraska. He was killed by an Iraqi IED.

BROWN008010

WBC to picket funeral of Army Spc. Benjamin A. Smith - 10 a.m., Fri.,
Nov.
11, at Bethel Lutheran leper colony 920 3rd St., Hudson, Wisc. Killed by
an
Iraqi IED.

WBC to picket funeral of Army Maj. Gerald M. Bloomfield II - 4 p.m.
Friday
Nov. 11, Stemm-Lawson-Peterson Funeral Home, Elkhart, Indiana. Killed by
Iraqi IED.

No virus found in this incoming message.

Checked by AVG.

Version: 7.5.524 / Virus Database: 269,23,16/1432 - Release Date: 5/14/2008 7:49 AM

BROWN008011

IN THE UNITED STATE PATENT & TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

JEFF BROWN,

Opposer,

v.

PATRIOT GUARD RIDERS, INC.,

Applicant.

) OPPOSITION NO.: 91181448
)
) TRADEMARK: PATRIOT GUARD
) RIDERS AND DESIGN
)
) APPLICATION NO.: 77/040379
)
) DATE FILED: NOVEMBER 9, 2006
)

EXHIBIT 11
IN SUPPORT OF OPPOSER'S MOTION FOR SUMMARY JUDGMENT

1 IN THE UNITED STATES PATENT & TRADEMARK OFFICE
 2 BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD
 3
 4
 5 JEFF BROWN,)
 6 Opposer and)
 7 Petitioner,)
 8 vs.) Opposition No. 91181448
 9 PATRIOT GUARD RIDERS, INC.,) Serial No. 77/040,379
 10 Applicant and)
 11 Respondent.)
 12 -----
 13
 14

15 **TELEPHONIC DEPOSITION OF RONNY ROY AWTRY,**

16 produced as a witness on behalf of the Opposer and
 17 Petitioner, in the above-styled and numbered cause,
 18 taken on the 28th day of October 2008, in the City of
 19 Tulsa, County of Tulsa, State of Oklahoma, before me,
 20 Marlene Percefull, Certified Shorthand Reporter, duly
 21 certified under and by virtue of the laws of the State
 22 of Oklahoma.
 23
 24
 25

1 A P P E A R A N C E S

2
 3 FOR THE OPPOSER: Ms. Courtney L. Bru
 4 Ms. Rachel Blue
 5 Attorneys at Law
 6 320 S. Boston
 7 Suite 500
 8 Tulsa, OK 74103
 9
 10 FOR THE APPLICANT: Mr. David J. Marr
 11 Mr. James A. O'Malley
 12 Attorneys at Law
 13 105 W. Adams St.
 14 Suite 3600
 15 Chicago, IL 60603
 16 (By Telephone)
 17
 18 ALSO PRESENT: Mr. Jeff Brown
 19 Mr. Bill Richart
 20 (By Telephone)
 21
 22
 23
 24
 25

1 I N D E X

2		
3	<u>W I T N E S S</u>	<u>P A G E</u>
4		
5	Ronny Roy Awtry	
6	Direct Examination by Ms. Bru	4
7	Cross Examination by Mr. Marr	77
8	Redirect Examination by Ms. Blue	89
9		
10		
11	Signature Page	91
12	Reporter's Certificate	92

13 EXHIBITS

14	<u>PETITIONER'S</u>		
15	Number	Identified	Offered
16	1 12-11-06 forum post	15	
17	2 12-7-06 forum post	25	
18	3 9-18-07 forum post	46	
19	4 12-6-06 e-mail	48	
20	5 12-27-06 e-mail	52	
21	6 7-8-08 e-mail	68	
22			
23			
24			
25			

1 (Whereupon, the deposition began
 2 at 9:02 a.m.)
 3 RONNY ROY AWTRY,
 4 having first been duly sworn to testify to the truth,
 5 the whole truth and nothing but the truth, testified as
 6 follows:

7 DIRECT EXAMINATION

8 BY MS. BRU:
 9 Q Could you state and spell your name for the
 10 record. 9:02AM
 11 A My name is Ronny Roy Awtry, R-O-N-N-Y, R-O-Y,
 12 A-W-T-R-Y.
 13 Q And what is your business address?
 14 A My business address is Speedy Services, 1050 KCK
 15 Way, Suite 2, Cedar Hill, Texas 75104. 9:02AM
 16 Q Okay. What is your e-mail address?
 17 A My e-mail address is Rrawtry@yahoo.com.
 18 Q Have you ever used any other e-mail addresses?
 19 A Yes, I have used Bear@Patriotguard.org.
 20 Q Okay. 9:03AM
 21 A And there was an SBC Global years ago, but I don't
 22 even remember it.
 23 Q Have you ever been deposed before?
 24 A Yes.
 25 Q Okay. So you understand that we're just going to 9:03AM

Page 17	Page 19
<p>1 it was turned over to Bonnie -- actually, no, I take 2 that back. It was physically submitted right around -- 3 by Bonnie somewhere in the neighborhood of January the 4 16 of 2007.</p> <p>5 Q Okay. I believe you said that you became a member 6 of the PGR organization in January of 2006, is that 7 correct?</p> <p>8 A That's correct.</p> <p>9 Q Do you recall if at that time you were able to 10 purchase items with the PGR logo on them from the Web 11 site ww.Patriotguard.org?</p> <p>12 A Yes.</p> <p>13 Q Are you aware that that store, that existed in 14 January of 2006, was owned by Jeff Brown?</p> <p>15 A No.</p> <p>16 Q Did you become aware of that at any time 17 afterwards?</p> <p>18 A Yes. I became aware of that somewhere in the 19 neighborhood of June of 2006. Initially, I was just a 20 guy logging onto the Web site, thought it was cool, 21 supported it, and bought a bunch of stuff. I had no 22 history of the Patriot Guard Riders or anything else.</p> <p>23 Q How did you come to find out that Jeff Brown owned 24 the store in June of 2006?</p> <p>25 A Jeff had set on a board of directors con call that</p>	<p>1 A Jason Wallin, of course, Snap or Bill Lines, who 2 was our secretary and stepped into the president role 3 of the Patriot Guard Riders.</p> <p>4 Q When did you talk with Snap about it?</p> <p>5 A I talked with Snap about it when the heated 6 question came up about does Jeff own the store or not 7 in the threads by a people. And Snap was perfectly 8 aware of it as well.</p> <p>9 Q Do you know whether Ed Mueller was aware that Jeff 10 Brown owned the store?</p> <p>11 A Do I know whether who was aware?</p> <p>12 Q Ed Mueller.</p> <p>13 A I do not have a clue whether Ed Mueller knew or 14 not. The only time that -- or when I first became 15 aware of Ed Mueller taking a stance one way or the 16 other was within a few days of Jeff Brown's 17 resignation.</p> <p>18 Q Were any other board of director members aware 19 that Jeff Brown owned the store?</p> <p>20 A Not that I'm aware of. Myself, Jason and Snap 21 were the only three.</p> <p>22 Q Are you familiar with the -- I'm just going to 23 call it the PGR logo. Are you familiar with the PGR 24 logo?</p> <p>25 A Very aware of it.</p>
Page 18	Page 20
<p>1 due to the amount of time he was investing in the 2 Patriot Guard Riders and running the store, that he 3 quit his job to do the Patriot Guard Riders full time. 4 Didn't physically state that he owned the store at that 5 time, but I -- I don't know, I think I'm a fairly 6 bright person. And so I asked Jason Wallin, who told 7 me that Jeff owned the store, at which point I asked 8 Jeff.</p> <p>9 Q Do you recall when you asked Jason Wallin who 10 owned the store?</p> <p>11 A I asked Jason Wallin who owned the store shortly 12 after that. Probably mid June of 2006. I mean, within 13 a week of it.</p> <p>14 Q Do you recall ever seeing a post on any forum on 15 the Web site ww.Patriotguard.org that stated that Jeff 16 Brown owned the store?</p> <p>17 A The only that I can recollect -- the only post or 18 the first post that I saw of that nature was, I 19 believe, in October of 2006 on the, you know, threads 20 in the open forums.</p> <p>21 Q When you say "open forums," do you mean anyone can 22 access those?</p> <p>23 A On any forums whatsoever.</p> <p>24 Q Okay. Did you ever have any conversation with 25 anyone else about Jeff Brown's ownership of the store?</p>	<p>1 Q Can you describe it for me?</p> <p>2 A The PGR logo is a folded flag in the triangle 3 background with "Patriot Guard Riders" below it and 4 depending on your version, "Riding with Respect" or 5 "Standing With Those Who Stood For Us."</p> <p>6 Q Which version existed first?</p> <p>7 A "Riding with Respect."</p> <p>8 Q When did the "Standing With Those Who Stood For 9 Us" version become available?</p> <p>10 A It started with the wrangling of issues regarding 11 the trademark in -- I think the first products with it 12 came out first to mid week -- just before Christmas of 13 2006.</p> <p>14 Q Do you know who created the PGR logo that included 15 the phrase "Riding with Respect"?</p> <p>16 A Jeff Brown did.</p> <p>17 Q Who else knew that?</p> <p>18 A Jason Wallin knew that. I would figure the 19 original secretary, Kurt Mayor, probably knew that.</p> <p>20 Everybody on the board of directors knew that Jeff 21 Brown physically created that logo.</p> <p>22 Q Did you ever personally have conversations with 23 Jason Wallin about whether or not Jeff Brown created 24 the logo?</p> <p>25 A Yes.</p>

Page 21

1 Q When did those conversations occur?
 2 A In June of 2006.
 3 Q Were those over the phone?
 4 A Yes.
 5 Q Do you recall any of the conversation?
 6 A Well, yes. At that time, Jason Wallin gave me the
 7 story of the advertising on the Web site, which it was
 8 agreed that Jeff Brown would run the Patriot Guard
 9 Riders store and create income from that. That was the
 10 agreed-to between Jason and Jeff. And that Jason
 11 would, from the Google ads, create income from the
 12 Google ads, both of them, for funding the time and
 13 effort they put into getting the organization running.
 14 Q Are you aware that Jeff Brown is claiming
 15 ownership of the PGR mark with the slogan "Riding with
 16 Respect"?
 17 A Yes, I am.
 18 Q And do you agree with his claims of ownership?
 19 A I believe that the Patriot Guard Riders logo needs
 20 to be properly with the Patriot Guard Riders,
 21 Incorporated. I think the organization needs to own
 22 its own logo.
 23 Q Let's talk about the slogan -- the mark with the
 24 slogan "Standing with Those who Stood For Us." I think
 25 you said it was created -- well, when was it created?

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9:29AM

9:29AM

Page 23

about what am I going to do for my merchandise now. So
 Ed Mueller was put in charge of a committee to locate
 products and -- and acquire bids and estimates for that
 service. And he had a friend in the business who owned
 CDM, who said that they would take it on and create the
 merchandise with no money up-front. There was no money
 at the time. There was no money up-front and he would
 own the entire inventory and the Patriot Guard Riders
 would, in turn, take the profits from whatever he sold
 it to us for.
 Q So did Ed Mueller solicit any other bids or
 estimates?
 A If I recall, the committee talked to a couple of
 people and -- or, there was a report from Ed was that
 the committee had looked at it and this looked to be
 the most profitable deal.
 Q Who owned the inventory, Ed Mueller or CDM?
 A CDM owned the inventory.
 Q Why were the references to Jeff Brown removed from
 the Web site?
 A Basically because Bonnie and Ed were entirely
 scorned and irrational by the actions of what they felt
 Jeff had done and arbitrarily were -- were removing any
 linkage of Jeff Brown that they possibly could.
 Q Was there a board of director's vote or decision

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9:33AM

Page 22

1 A It was probably created or the idea was
 2 conceptualized probably in late November of 2006 with
 3 store opening in, like I said, early December of 2006.
 4 Q What store opened in early December 2006?
 5 A The Patriot Guard Riders authorized a company to
 6 begin selling merchandise. We put the logo -- I mean,
 7 we put that particular merchandise physically
 8 incorporated into our own Web site and contracted for
 9 sale of the products.
 10 Q Is that the first store that sold merchandise with
 11 a PGR logo that was opened by the PGR as opposed to
 12 Jeff Brown?
 13 A Yes, it was.
 14 Q And is the company that you're referring to CDM?
 15 A Yes, it is.
 16 Q Were you on the board when the PGR, Incorporated,
 17 decided to use CDM?
 18 A Yes, I was.
 19 Q Were there con calls about that?
 20 A Yes, there was.
 21 Q Can you describe those for me?
 22 A Well, when any inference whatsoever to Jeff Brown
 23 was removed from the Web site, up to and including our
 24 history at the very beginning was removed from the web
 25 site, it was determined that people were screaming

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Page 24

to remove those references?
 A I believe -- well, yes and no. There were some
 matching times where Ed proceeded and made a call and
 then came back to the board. And there were some
 references at times where the board would vote, like,
 whether his store was going to remain to be allowed
 operational.
 Q Describe those for me.
 A Well, the gist of it was that Bonnie had
 basically -- prior to that, I think the history is
 extremely important -- had rather harshly removed and
 fired various members for any -- any interference to
 Jeff whatsoever. When Jeff was removed, she gave us a
 standing offer that he would close the store and turn
 everything over to the Patriot Guard Riders. Wanted 30
 days to clear his inventory or approximately 30 days.
 Wanted a rational period of time to clear his inventory
 and ask that he be listed as the founder emeritus of
 the Patriot Guard Riders, neither of which I personally
 thought was an extremely flamboyant thing to do at the
 time. I thought it was extremely prudent. And Snap
 was with me. Me and Bill Lines were the only ones who
 had contact with Jeff Brown at this particular point.
 Basically, Bonnie and Ed were pretty emotional in the
 deal and decided that was entirely unacceptable. And I

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1 want to take sides with one or the other. But at this
2 point, if they're asking you questions and you want the
3 truth, then the only way to do it is to be
4 unrepresented.

5 MS. BRU: Dave, we're ready to pass the
6 witness. I don't know if you want to take a break.

7 MR. MARR: If it's all right with Ronny, I
8 just have a few questions relating to the trademark.
9 And I don't know if he anticipated, I won't take too
10 much more of your time, Ronny, would you like to
11 continue and finish it or would you like to take a
12 break?

13 A Sure, we can go ahead. That's fine.

14 MS. BLUE: Dave, one second. This is
15 Rachel before you go forward. Courtney has to
16 leave. She's got to go speak at another seminar, so
17 she's going to be leaving us, but I'll be here so
18 continue, okay?

19 MR. MARR: Okay. That's fine.

20 MS. BLUE: Okay. Go ahead.

21 CROSS EXAMINATION

22 BY MR. MARR:

23 Q Ronny, before Jeff Brown resigned from the PGR,
24 were you ever aware that he claimed to own the PGR
25 trademark as an individual?

11:10AM November, but we operated as a five-man board from June 11:11AM
2 forward.

3 Q Okay. I believe you testified that you became
4 aware that the store was -- the PGR store was owned by
5 Jeff Brown sometime in June of 2006, is that correct? 11:13AM

6 A That's correct.

7 Q Based on your -- well, did you become aware at the
8 same time that Jeff Brown claimed ownership of the
9 trademarks?

10 A No, never thought to -- never thought to go down 11:13AM
11 that road. I just knew that Jeff owned the store at
12 that time, based on conversation with Jason Wallin and
13 Jeff Brown himself and later Snap.

14 Q Did you ever see any posts by Jeff Brown on the
15 web site prior to October of 2006 claiming that -- or 11:13AM
16 admitting that he owned the store?

17 A Truthfully, no. I never -- never saw anything
18 prior to that, official. That doesn't mean it wasn't
19 out there, that just meant I never saw it or
20 participated in it. 11:14AM

21 Q Did you ever see any indication on Jeff Brown's
22 store web site indicating in any way or any indicia
23 that he as an individual owned that store?

24 A I, frankly, never looked. I just got myself and
25 went down the road, so I did not see anything that said 11:14AM

1 A I have no specific knowledge that he claimed to
2 own the trademark as an individual. I mean, like I
3 said, I knew that he owned the store.

4 Q Was it your understanding that Jeff Brown's use of
5 the trademarks, PGR trademarks, was on behalf of the
6 corporation or on behalf of himself as an individual? 11:11AM

7 A I never really put much thought into it. I always
8 thought that the logo up to that point was just part of
9 the Patriot Guard Riders and I assumed that it was our
10 logo. 11:11AM

11 Q When you say "our," what are you referring to?

12 A "Our," the Patriot Guard Riders.

13 Q The organization or the corporation?

14 A Yes. The physical Patriot Guard Riders,
15 Incorporated. 11:12AM

16 Q Okay. You said that -- when did you testify that
17 you originally became a board member? What month and
18 year was that?

19 A I originally became a board member in 2006, at the
20 same approximate time as Bonnie Cutler. The board had
21 been a three-man board until then and it was expanded
22 to a five-man board.

23 Q Okay. And that was -- I'm sorry, go ahead.

24 A I found out later that was never, you know,
25 officially put in the bylaws or anything until 11:12AM

11:11AM that, but I was not looking. 11:11AM

2 Q At some point during your testimony you testified
3 that you knew what Twister's store was. Prior to
4 October of 2006, was there an indication on the web
5 site that it was "Twister's" store? 11:11AM

6 A I don't know. Prior to November of 2006, I had
7 never spent more than ten minutes thinking it was worth
8 investigating.

9 Q Okay. Let's see. Then in June of '06, you
10 testified that you and Jason and Bill Lines, in short 11:15AM
11 order, became aware that Jeff owned the store, is that
12 correct?

13 A Yes. And I don't know that Bill Lines -- me and
14 Bill talked about it probably in August, but I know me
15 and Jason and Jeff were talking independently about it 11:15AM
16 as early as June of 2006.

17 Q Did you ever tell that to Ed Mueller or Bonnie
18 Cutler?

19 A No. At that time, Ed Mueller wasn't even an
20 associate of the board of directors. He was, I 11:16AM
21 believe, the head forum moderator or national captain,
22 somewhere in there. And as I said, me and Bonnie never
23 really saw eye to eye on a lot of things and
24 communication extremely broke down shortly after that
25 but, no, I never much confided in Bonnie much. 11:16AM

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1 Q Did you tell other members of the head shed in
2 June of '06, that you had learned that Jeff owned the
3 store as an individual?

4 A No, not necessarily. I didn't discuss it with
5 anybody.

6 Q I believe you testified that in October of '06 is
7 when it became public knowledge that Jeff owned the
8 store, is that correct?

9 A That's the best of my knowledge, yes.

10 Q Why do you think that there was such an uproar
11 among the membership upon learning that Jeff Brown
12 owned the store?

13 A Well, I have to say that it wasn't -- at that
14 time, there wasn't an uproar amongst the membership at
15 large. There were probably five people, Tony Turner,
16 Monica, Monica Mead, Allen Mullis, a small group of
17 people on the east side who, like I said, were a very
18 focal minority, but just wouldn't quit raising Cain.
19 Most of the people, I felt at that time, couldn't care
20 one way or the other.

21 Q Was it publically known that Jeff Brown was
22 profiting as an individual from the store sales?

23 A Not to my knowledge. Like I said, I knew and I
24 knew that Jason and Snap knew and, frankly, as the
25 board of directors, I pretty much spent most of my time

11:16AM

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was handled first, followed shortly by a negotiation to
gain the store, in which point somebody discovered that
there was an official trademark and the board elected
to have Jason pursue officially trademarking.

Q And you testified that at that time you knew that
Jeff Brown was using the mark, but did you know that he
was using it as an individual or did you know that he
was using it on behalf of the organization?

A I knew that he was using it as an individual, but
I also was really aware of the large amount of money
he'd invested into the Patriot Guard Riders through
that. And then myself, at that particular time, I
personally didn't see what the big deal was all about.

I was talking to Jeff independently that there's
character I talked about, I call him Uncle Bubba, and
Uncle Bubba thinks he's a rocket scientist and he's --
he's about a half wit in reality. And I told Jeff that
I don't think that Uncle Bubba would understand this
because that's -- it was starting to -- this was
probably right before Jeff went out of town after the
furor had already started.

Q I see. In your opinion, as of, I believe it was,
November 8, 2006, when the board authorized Jason to
file the trademark on the organization's behalf, who
was using the mark in connection with the missions that

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Page 82

1 and most of my efforts in the national administration
2 and jumped out on the Web site when a fire broke out to
3 try to maintain calm. And that's when it really got
4 nasty was in late October of 2006.

Q I see. Did you know to the extent of the -- do
you know the extent of the process that Jeff Brown was
making from the store sales?

A I had no clue.

Q Do you know now?

A No, I don't know now. You know, he said in his
e-mail that's his and Bonnie's store and nobody's
business.

Q Okay. Just a few more questions. When did the
org con call that you testified about to remove Jeff
Brown take place?

A Saturday, I would have to look at it, but I
believe the first Saturday in November, Jeff was at
Snap's house, like I said, and I believe it was the
first Saturday in November.

Q Of?

A Of 2006.

Q Okay. Was that before or after the con call
wherein the board authorized Jason Wallin to file the
trademark on its behalf?

A That was before. The trademark -- Jeff's issue

11:18AM

11:18AM

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11:19AM

11:19AM

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were being conducted to honor our fallen soldiers?

A That's a pretty broad sweeping statement. I mean,
everybody wanted Patriot Guard Riders merchandise,
everybody wanted to be identified as Patriot Guard
Riders merchandise on missions. So the Web site was
using it, the individual riders were using it,
Twister's store was using it. Just a pretty broad
sweeping range of folks were Patriot Guard Riders.

Q Okay. Before Jeff Brown resigned from the PGR,
did you have any knowledge with regard to any type of a
license or permission allegedly being presented by Jeff
Brown to the PGR organization and/or corporation to use
the PGR trademarks?

A No. I'll go back to I had never spent more than
ten minutes researching it. I knew Jeff Brown owned
the store and I knew that the Patriot Guard Riders was
using it. And it might be naivety on my part, but I
never saw a conflict of interest.

Q Did you and the PGR leadership, at the time that
you authorized Jason Wallin to tried to file the
trademark application on the corporation's behalf, did
you believe that the trademark was owned by the
organization?

A Yes, I did. I thought it represented the
organization and it was so fundamentally tied to our

11:21AM

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11:23AM

IN THE UNITED STATE PATENT & TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

JEFF BROWN,

Opposer,

v.

PATRIOT GUARD RIDERS, INC.,

Applicant.

)
) OPPOSITION NO.: 91181448
)
) TRADEMARK: PATRIOT GUARD
) RIDERS AND DESIGN
)
) APPLICATION NO.: 77/040379
)
) DATE FILED: NOVEMBER 9, 2006
)

EXHIBIT 12
IN SUPPORT OF OPPOSER'S MOTION FOR SUMMARY JUDGMENT

From: psarracino [psarracino@americanpatch.com]
Sent: Friday, November 11, 2005 12:29 PM
To: Jeffbrown@valornet.com
Subject: Patch Confirmation
Follow Up Flag: Follow up
Flag Status: Flagged
Attachments: AP8483conf.pdf



**American Patch
& Emblem Company**

A DIVISION OF TMAC GROUP, INC.

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(800) 752-1667
(610) 240-9670 FAX

Attached, please find a copy of the confirmation for your recent order. Please review the same for accuracy, insert your credit card information, sign and fax back to our office at 610-240-9670 or email to sales@americanpatch.com.

Upon receipt we will immediately commence work on this order and will forward to you by fax or e-mail, either a computer rendering or an actual scan of a pre-production sample of your patch.

Only after your approval of the scan we will bill your credit card for the amount of your order.

Please be advised that the credit/debit card charge will appear on your statement showing a merchant name of "American Patch", "Petshirt.com" or our parent company "TMAC Group"

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10/10/2008

BROWN010279



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(610) 240-8911
(610) 240-9670 FAX

ORDER CONFIRMATION

DATE	CONF. #
11/11/2005	8483

BILL TO
Jeff Brown 8321 South 8th Street Broken Arrow, OK 74011

SHIP TO
Jeff Brown 8321 South 8th Street Broken Arrow, OK 74011

P.O. NUMBER	TERMS	REP	VIA	F.O.B.	PROJECT	EST. SHIP DATE
JB11112005	Credit Card		UPS	Villanova		3 Weeks
QUANTI...	ITEM CODE	DESCRIPTION	SIZE	PRICE EACH	AMOUNT	
100	AP8483	AP8483 "Patriot Gaurd Rider" 3x2" rectangle, stitched edge, plastic backing	2.5"	1.46	146.00	
	Shipping	Shipping and Handling		8.00	8.00	
		Out-of-state sale, exempt from sales tax		0.00%	0.00	
Credit Card Type: Visa, Mastercard, American Express, Discover						
Number _____						
Expiration Date _____						
Name on card _____						
Company (if Corporate or Business card) _____						
Billing address for card _____						

Cardholder signature _____						
Total					\$154.00	

Kindly review the order. Make any corrections and immediately fax signed copy to (610)240-9670

Approved _____

BROWN010280

IN THE UNITED STATE PATENT & TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

JEFF BROWN,

Opposer,

v.

PATRIOT GUARD RIDERS, INC.,

Applicant.

) OPPOSITION NO.: 91181448

) TRADEMARK: PATRIOT GUARD
) RIDERS AND DESIGN

) APPLICATION NO.: 77/040379

) DATE FILED: NOVEMBER 9, 2006

)

EXHIBIT 13

IN SUPPORT OF OPPOSER'S MOTION FOR SUMMARY JUDGMENT

From: Caitlin Chandler [cchandler@americanpatch.com]
Sent: Monday, November 14, 2005 9:55 AM
To: jeffbrown@valornet.com
Subject: Patriot Guard Rider pre-production patch scan
Attachments: ap8483-1.jpg



**American Patch
& Emblem Company**

A DIVISION OF TMAC GROUP, INC.

P.O. BOX 142
VILLANOVA, PENNSYLVANIA
19085
(610) 240-9911
(800) 752-1667
(610) 240-9670 FAX

Attached please find a scan of the pre-production sample patch we have manufactured in response to your recent order.

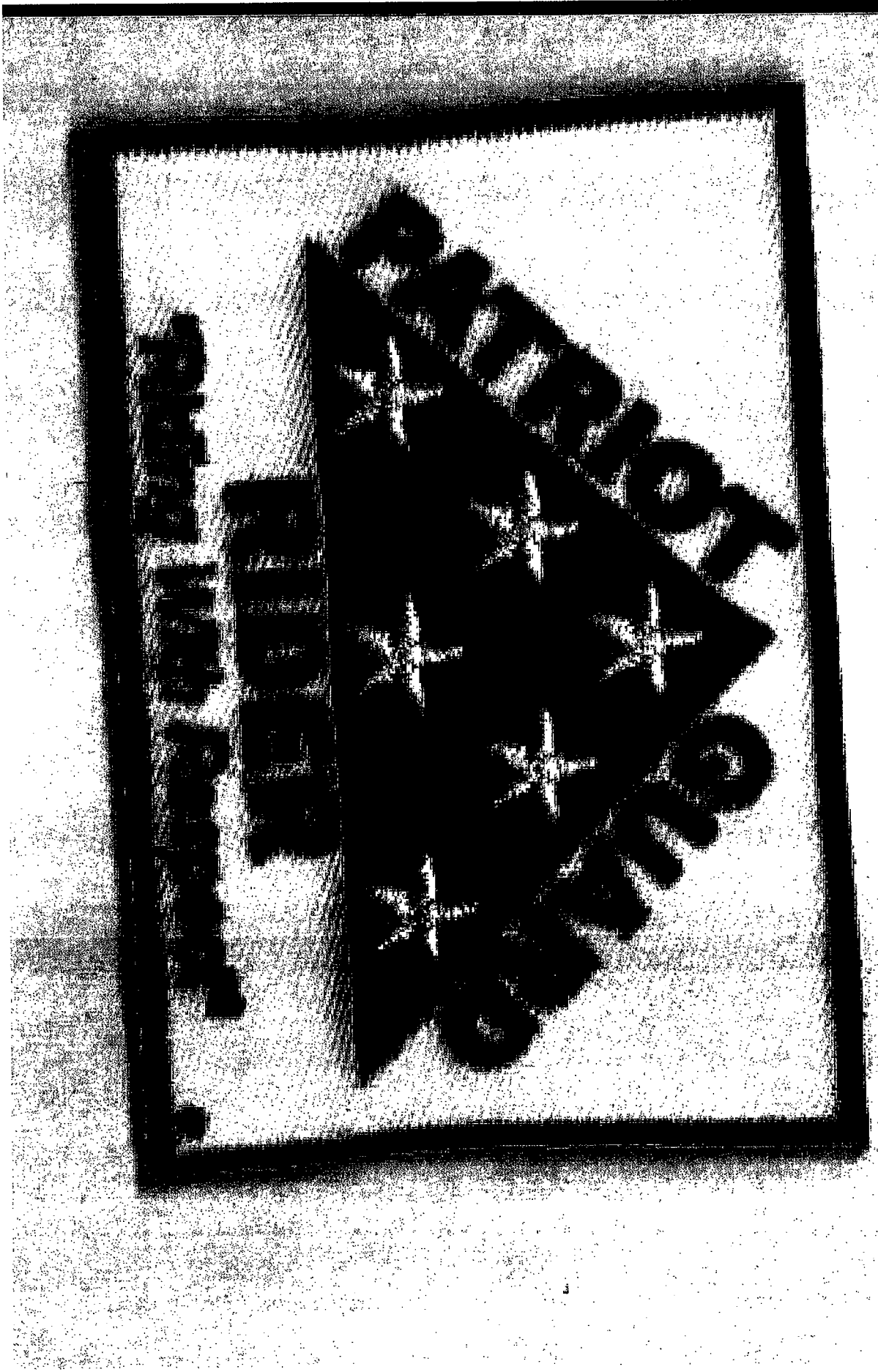
Please review the scan and advise our office of your approval by return e-mail and we will put the patch into production and ship your patches to you as soon as possible.

Very Truly Yours,

Caitlin Chandler
cchandler@americanpatch.com
800-752-1667

10/10/2008

BROWN010281



BROWN010282

IN THE UNITED STATE PATENT & TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

JEFF BROWN,

Opposer,

v.

PATRIOT GUARD RIDERS, INC.,

Applicant.

) OPPOSITION NO.: 91181448
)
) TRADEMARK: PATRIOT GUARD
) RIDERS AND DESIGN
)
) APPLICATION NO.: 77/040379
)
) DATE FILED: NOVEMBER 9, 2006
)

EXHIBIT 14
IN SUPPORT OF OPPOSER'S MOTION FOR SUMMARY JUDGMENT

From: Jeff Brown <jeffbrown@valornet.com>
Sent: Thursday, February 1, 2007 8:30 AM
To: John Jacobs <mnjjacobs@gmail.com>
Subject: RE: Trademarks

John,

Here's what I can find on the first invoices for other PGR products. They were gleaned from the old software (Quickbooks). Unfortunately, the new software will not let me pull up this kind of data, so some of the newer products are not included. If the newer products are important, let me know and I'll try to manually go through all the invoices and see what I can find.

3X5 Flags	11/12/06
Armbands	11/29/05
Blue Ball Caps	12/08/05
Bike Flags	11/29/05
Dog Tag Pins	12/14/05
License Plate	12/09/05
Long Sleeve Shirts	12/23/05
Short Sleeve Shirts	12/23/05
Maroon Ball Caps	12/23/05
Black Ball Caps	3/31/06
Ride Captain Patch	12/23/05
State Captain Patch	12/23/05
Ride Decals	11/29/05
Rider Lapel Pins	12/14/05
Scooter Sissy Patch	6/20/06
Windshield Banner	11/30/05

Thanks,
Jeff

-----Original Message-----

From: John Jacobs [mailto:mnjjacobs@gmail.com]
Sent: Monday, January 29, 2007 10:03 PM
To: Jeff Brown
Subject: Re: Trademarks

That's great. We need the first sale date invoice for each of the other categories of store items too.

I hope all is well.

John Jacobs

On 1/23/07, **Jeff Brown** <jeffbrown@valornet.com> wrote:

John,
Thanks.

I did some research and found the first invoice for two PGR Vest Patches was written on 11/15/2005.

Thanks,
Jeff

-----Original Message-----

From: John Jacobs [mailto:mnjjacobs@gmail.com]
Sent: Tuesday, January 23, 2007 3:18 PM
To: Jeff Brown
Subject: Re: Trademarks

Jeff -

This is regarding the copyright application only, which is completely distinct from the trademarks.

It's a bit surprising, but they're saying that the logo doesn't show sufficient creativity to be copyrightable. I've not seen them do that before with what seem to be similar submissions. The legal threshold for the required level of creativity is supposed to be quite low. Here's a link to an [article](#) that spells it out pretty well.

That said, I understood your primary goal in registering is so you would be legally able to sue on the copyright (although that isn't your current plan of action). Submitting the registration, even though they reject it, meets that requirement (although you would have to notify the copyright office in case of a suit so they could possibly weigh in on the matter of whether the submission is in fact copyrightable).

I'll do a some of research to see if there's recent cases that have changed or clarified the standard.

Also, do you have the dates that the store items were first put on sale?

John Jacobs

On 1/22/07, **Jeff Brown** <jeffbrown@valornet.com> wrote:

John,

Not sure if you got a copy of this or if you feel comfortable assisting with it. If you don't, no problem, just let me know. I don't understand what they are saying and if I have any options or further course of action open.

Thanks,

Jeff

--

No virus found in this outgoing message.

Checked by AVG Free Edition.

Version: 7.5.432 / Virus Database: 268.17.4 /644 - Release Date: 1/22/2007

7:30 AM

IN THE UNITED STATE PATENT & TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

JEFF BROWN,

Opposer,

v.

PATRIOT GUARD RIDERS, INC.,

Applicant.

) OPPOSITION NO.: 91181448
)
) TRADEMARK: PATRIOT GUARD
) RIDERS AND DESIGN
)
) APPLICATION NO.: 77/040379
)
) DATE FILED: NOVEMBER 9, 2006
)

EXHIBIT 15
IN SUPPORT OF OPPOSER'S MOTION FOR SUMMARY JUDGMENT

PO BOX 180
Coweta, Ok 74429


918-486-7372

(FAX) 918-279-1174
DRJ74429@JUNO.COM

To who it may concern:

On November 28th 2005 the Jeff Brown "Twister" placed an initial order of 100 Windshield Banners with the Riding with Respect flag logo on them . The order was shipped on December 2nd, 2005.



Donnie Jackson
D & D Signs

BROWN008034

IN THE UNITED STATE PATENT & TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

JEFF BROWN,

Opposer,

v.

PATRIOT GUARD RIDERS, INC.,

Applicant.

)
) OPPOSITION NO.: 91181448
)
) TRADEMARK: PATRIOT GUARD
) RIDERS AND DESIGN
)
) APPLICATION NO.: 77/040379
)
) DATE FILED: NOVEMBER 9, 2006
)

EXHIBIT 16
IN SUPPORT OF OPPOSER'S MOTION FOR SUMMARY JUDGMENT

From: Rita Agcaoili [rita@promopeddler.com]
Sent: Monday, December 05, 2005 4:37 PM
To: jeffbrown@valornet.com
Cc: 'Debbie Bennett'
Subject: Jeff Brown Proof
Importance: High
Attachments: 13169 Proof.jpg

Jeff - Attached is the art proof for your order. Please review and if you approve email your reply a.s.a.p. Your order is on hold pending your approval. Production will not start on your order until we receive your approval back. If you disagree please mark any changes to the art proof and email back with your changes (voluntary changes to art may result in additional charges and delays).

Rita Agcaoili
Product Support Specialist
Phone: 503-783-1560 x 207
Fax: 415-598-2660
www.promopeddler.com
www.newideapromos.com
www.bagpeddler.com

10/10/2008

BROWN010277

ART APPROVAL

*Please check artwork carefully.
Fax back your approval or any changes.
A faxed confirmation is necessary to proceed.*

SEND TO: RITA

COMPANY: FROMOPEDDLER

DATE: 12/5/05

PHONE NUMBER: 503 783 1480 EXT 207

FAX NUMBER: 415 598 2860

PRODUCT DESCRIPTION: 4.5" ARM BAND

IMPRINT COLOR: BLACK

MATERIAL COLOR: FL YELLOW

Please check one of the following boxes:	
Proof approved as is. OK to produce.	<input type="checkbox"/>
Make noted changes, then proceed.	<input type="checkbox"/>
Make changes, then fax new proof.	<input type="checkbox"/>

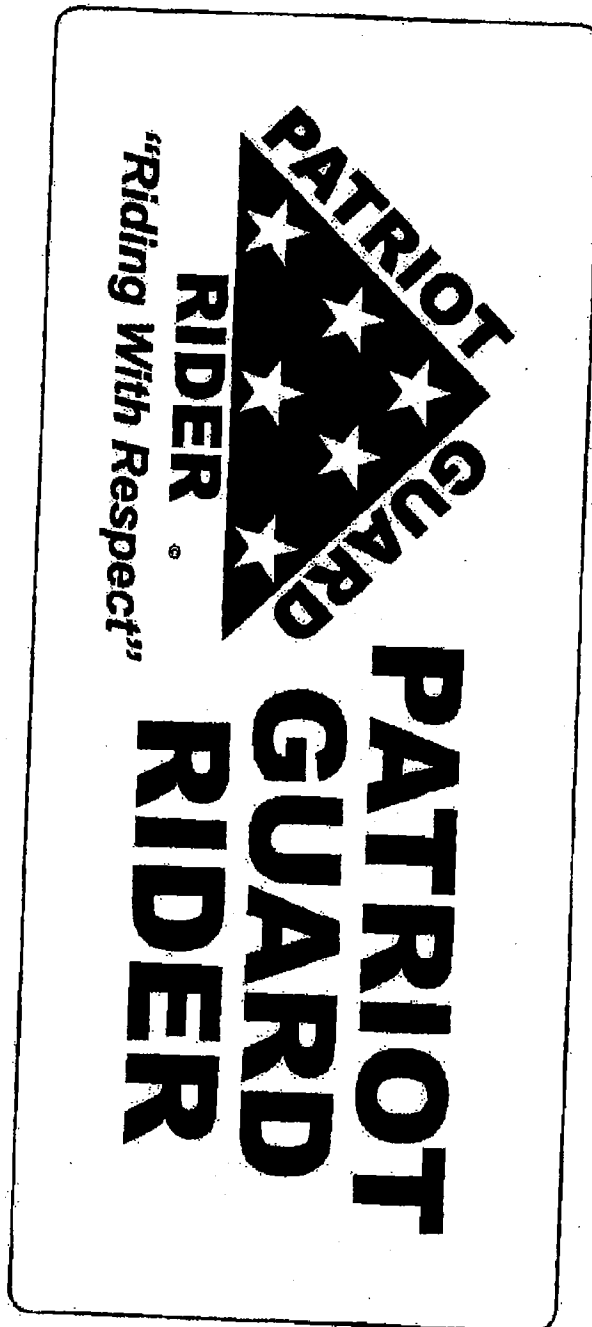
PRINT NAME: DATE:

SIGNATURE :

Important:

(Please note that the position of the artwork as shown may vary slightly in manufacturing.)

ARTWORK:



IN THE UNITED STATE PATENT & TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

JEFF BROWN,

Opposer,

v.

PATRIOT GUARD RIDERS, INC.,

Applicant.

) OPPOSITION NO.: 91181448
)
) TRADEMARK: PATRIOT GUARD
) RIDERS AND DESIGN
)
) APPLICATION NO.: 77/040379
)
) DATE FILED: NOVEMBER 9, 2006
)

EXHIBIT 17
IN SUPPORT OF OPPOSER'S MOTION FOR SUMMARY JUDGMENT

CF-462

#228135 **Order united-states-flag-228135 for United-states-flag**
Date Fri Dec 30 14:03:29 EDT 2005
Ship to Jeff Brown
 8321 South 8 St
 Broken Arrow OK 74011
 US United States
 918 449 1652

Business address no
Bill to Same
E-Mail jeffbrown@valomet.com
Via UPS Ground
Payment Visa
Comments Pled order Per JM request (Anna)

Item	Code	Qty	Unit Price
Custom Car Flag 11 x 14inch 2 color double sided Superknit Polyester http://store.yahoo.com/united-states-flag/cuf11x142co1.html (Shipped)	CUST1114HF_2_2	100	4.95
Custom Car Flag set up charge 11 x 14inch 2 color http://store.yahoo.com/united-states-flag/cuf1setupch15.html (Shipped)	CUST1114HF_2_SETUP	1	44.00
Subtotal			539.00
Shipping			10.31
Tax			0.00
Total			549.31

EXHIBIT 18
IN SUPPORT OF OPPOSER'S MOTION FOR SUMMARY JUDGMENT

ARTICLES OF ORGANIZATION
OF AN
OKLAHOMA LIMITED LIABILITY COMPANY

The undersigned, for the purpose of forming an Oklahoma limited liability company pursuant to the provisions of 18 O.S., Section 2004, does hereby execute the following articles:

ARTICLE I. NAME

The name of the limited liability company shall be PGR Store, LLC.

ARTICLE II. ADDRESS

The street address of its principal place of business is 3708 South Elm Place, PMB #137, Broken Arrow, Oklahoma 74011.

ARTICLE V. RESIDENT AGENT

The name and street address of the resident agent in the State of Oklahoma is Bonnie L. Brown, 3708 South Elm Place, PMB #137, Broken Arrow, Ok 74011.

ARTICLE VI. TERM OF EXISTENCE.

The term of existence shall be perpetual.

Organized by:

Bonnie L. Brown
3708 South Elm Place, PMB #137
Broken Arrow, Oklahoma 74011

Signature Bonnie L. Brown

Dated 2/10/06

02/13/2006 01:28 PM

OKLAHOMA SECRETARY OF STATE



SOS



4590600002

OFFICE OF THE SECRETARY OF STATE



**CERTIFICATE
OF
LIMITED LIABILITY COMPANY**

WHEREAS, the Articles of Organization of

PGR STORE, LLC

an Oklahoma limited liability company has been filed in the office of the Secretary of State as provided by the laws of the State of Oklahoma.

NOW THEREFORE, I, the undersigned, Secretary of State of the State of Oklahoma, by virtue of the powers vested in me by law, do hereby issue this certificate evidencing such filing.

IN TESTIMONY WHEREOF, I hereunto set my hand and cause to be affixed the Great Seal of the State of Oklahoma.



*Filed in the city of Oklahoma City this
13th day of February, 2006.*

M. Susan Savage

Secretary of State

IN THE UNITED STATE PATENT & TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

JEFF BROWN,

Opposer,

v.

PATRIOT GUARD RIDERS, INC.,

Applicant.

) OPPOSITION NO.: 91181448
)
) TRADEMARK: PATRIOT GUARD
) RIDERS AND DESIGN
)
) APPLICATION NO.: 77/040379
)
) DATE FILED: NOVEMBER 9, 2006
)

EXHIBIT 19
IN SUPPORT OF OPPOSER'S MOTION FOR SUMMARY JUDGMENT

OFFICE OF THE SECRETARY OF STATE



**NOT FOR PROFIT
CERTIFICATE OF INCORPORATION**

WHEREAS, the Not For Profit Certificate of Incorporation of

PATRIOT GUARD RIDERS, INC.

has been filed in the office of the Secretary of State as provided by the laws of the State of Oklahoma.

NOW THEREFORE, I, the undersigned, Secretary of State of the State of Oklahoma, by virtue of the powers vested in me by law, do hereby issue this certificate evidencing such filing.

IN TESTIMONY WHEREOF, I hereunto set my hand and cause to be affixed the Great Seal of the State of Oklahoma.



*Filed in the city of Oklahoma City this
21st day of February, 2006.*

M. Susan Savage

Secretary of State

OKLAHOMA Secretary of State Electronic Filing**DOMESTIC NOT FOR PROFIT CORPORATION**

Document Number: 4816540002 Submit Date: 2/21/2006

CORPORATION NAME

The name of the corporation is:
PATRIOT GUARD RIDERS, INC.

PURPOSE

This nonprofit corporation is organized and operated exclusively for charitable purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under Section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code.

This corporation does not have authority to issue capital stock.

This corporation is not for profit, and as such the corporation does not afford pecuniary gain, incidentally or otherwise, to its members.

EFFECTIVE DATE

Effective Date:

DURATION

Perpetual

REGISTERED AGENT AND REGISTERED OFFICE ADDRESS**Agent Name**

Jeffrey A Brown

Address

8321 S. 8th Street

Broken Arrow, OK 74011 USA

INCORPORATOR INFORMATION**Name**

Jeffrey A. Brown

Title

Incorporator

Address

8321 S. 8th Street

Broken Arrow, OK 74011 USA

Name

Kurt Mayer

Title

Incorporator

Address

14830 Santa Lucia Drive

Houston, TX 77083 USA

Name

Jason Wallin

Title

Incorporator

Address

312 Granite Court

Windsor, CO 80550 USA

BROWN007859

DIRECTOR INFORMATION

Name
Jeffrey A Brown
Address
8321 S. 8th Street
Broken Arrow, OK 74011 USA

Title
Director

Name
Kurt Mayer
Address
14830 Santa Lucia Drive
Houston, TX 77063 USA

Title
Director

Name
Jason Wallin
Address
312 Granite Court
Windsor, CO 80550 USA

Title
Director

The Number of Directors to be Elected at the First Meeting: 3

ATTACHMENTS

File Label
Additional language

File Name and Path
G:\Paula\WPD\OK\FORMS\Additional Language.pdf

SIGNATURE

I hereby certify that the information provided on this form is true and correct to the best of my knowledge and by attaching the signature I agree and understand that the typed electronic signature shall have the same legal effect as an original signature and is being accepted as my original signature pursuant to the Oklahoma Uniform Electronic Transactions Act, Title 12A Okla. Statutes Section 15-101, et seq.

Dated - 2/21/2006

Corporation Name

Signature Name
Jeffrey A. Brown
Kurt Mayer
Jason Wallin

Title
President
Secretary
Treasurer

[End Of Image]

BROWN007860

IN THE UNITED STATE PATENT & TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

JEFF BROWN,

Opposer,

v.

PATRIOT GUARD RIDERS, INC.,

Applicant.

) OPPOSITION NO.: 91181448
)
) TRADEMARK: PATRIOT GUARD
) RIDERS AND DESIGN
)
) APPLICATION NO.: 77/040379
)
) DATE FILED: NOVEMBER 9, 2006
)

EXHIBIT 20
IN SUPPORT OF OPPOSER'S MOTION FOR SUMMARY JUDGMENT

1 IN THE UNITED STATES PATENT & TRADEMARK OFFICE
 2 BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD
 3
 4
 5 JEFF BROWN,
 6 Opposer and
 7 Petitioner,
 8 vs. Opposition No. 91181448
 9 PATRIOT GUARD RIDERS, INC., Serial No. 77/040,379
 10 Applicant and
 11 Respondent.
 12 -----
 13
 14

THE DEPOSITION OF WILLIAM HAROLD RICHART,

15 produced as a witness on behalf of the Opposer and
 16 Petitioner, in the above-styled and numbered cause,
 17 taken on the 13th day of October 2008, in the City of
 18 Tulsa, County of Tulsa, State of Oklahoma, before me,
 19 Marlene Percefull, Certified Shorthand Reporter, duly
 20 certified under and by virtue of the laws of the State
 21 of Oklahoma.
 22
 23
 24
 25

I N D E X

3	W I T N E S S	P A G E
4		
5	Bill Richart	
6	Direct Examination by Ms. Bru	4
7	Cross Examination by Mr. Marr	109
8	Redirect Examination by Ms. Bru	111
9		
10	Signature Page	114
11	Reporter's Certificate	115

EXHIBITS

13	PETITIONER'S		
14	Number	Identified	Offered
15	5 Terms of Use	20	
16	6 E-mail 4-28-08	21	
17	7 E-mail 8-13-07	34	
18	8 Zippy posting	35	
19	9 E-mail 1-6-08	42	
20	10 E-mail 5-22-08	68	
21	11 Wescoot 2 posting	69	
22	12 E-mail 1-6-08	73	
23	13 FJB Web site	76	
24	14 Trademark app	87	
25	15 Trademark app	88	
	16 Trademark app	--	
	17 Notice of Oppos.	91	
	18 Applicant's Answer	93	
	19 E-mail 5-12-08	95	

A P P E A R A N C E S

1
 2
 3 FOR THE OPPOSER
 4 AND PETITIONER: Ms. Courtney L. Bru
 Ms. Rachel Blue
 Attorneys at Law
 320 S. Boston
 Suite 500
 Tulsa, OK 74103
 7
 8
 9 FOR THE APPLICANT
 10 AND RESPONDENT: Mr. David J. Marr
 Mr. James A. O'Malley
 Attorneys at Law
 105 W. Adams St.
 36th Floor
 Chicago, IL 60603
 11
 12
 13 ALSO PRESENT: Mr. Jeff Brown
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

1 (whereupon, the deposition began
 2 at 2:19 p.m.)
 3 WILLIAM HAROLD RICHART,
 4 having first been duly sworn to testify to the truth,
 5 the whole truth and nothing but the truth, testified as
 6 follows:

DIRECT EXAMINATION

7
 8 BY MS. BRU:
 9 Q Could you please state your name and spell your
 10 name. 2:19 PM
 11 A William -- full name?
 12 Q Sure.
 13 A -- Harold Richart, II. Spell all that?
 14 Q Just the last name for us.
 15 A R-I-C-H-A-R-T. 2:19 PM
 16 Q It's Richart?
 17 A (Nods head.)
 18 Q we've had like a money bet going on how you
 19 pronounce that.
 20 A You're like four or five behind. 2:19 PM
 21 Q What's your address?
 22 A 218 East Boonville, 8-O-O-N-V-I-L-L-E, in Sedalia,
 23 Missouri.
 24 Q What's your current position with PGR,
 25 Incorporated? 2:19 PM

Page 17

1 relationship with Jeff?
 2 A Again, can you provide a time frame?
 3 Q Since you met him.
 4 A Initially we probably spoke several times a week
 5 for a while, sometimes the same day and sometimes not
 6 for a long time. But in the initial aspects of what I
 7 believed the PGR was doing was good.
 8 Q Do you consider yourself sort of a spokesperson
 9 for the organization to the membership?
 10 A Certainly.
 11 Q Okay. Who else would you say has that sort of
 12 designation?
 13 A I would say a large group of PGR members from our
 14 national staff, including our ride captains. Ride
 15 captains are presented to the membership.
 16 Q I guess since you came onboard in March or
 17 February of 2007 --
 18 A Six.
 19 Q -- 6, were you involved at all in the creation of
 20 the web site?
 21 A No.
 22 Q Okay. Have you ever been involved in a decision
 23 to limit a member's access to www.patriotguard.org? Go
 24 ahead and answer again for me.
 25 A I'm sorry, yes.

2:34 PM

A Yes.

2:37 PM

2 Q Is there any way someone could look at the store,
 3 the mission statement and the history and not be
 4 allowed to look at the forums?

2:34 PM

5 A Not nonmembers. You have to be a member to be
 6 able to see the forums.

2:37 PM

7 Q How do you sign up to be a member?

8 A There's a link on the home page.

9 Q Have you ever rejected anyone who wanted to be a
 10 member?

2:37 PM

11 A There's no review process when somebody signs an
 12 account up.

13 Q Do you all members get patriotguard.org Web
 14 addresses, e-mail addresses?

2:35 PM

15 A No.

2:37 PM

16 Q How do you get one of those?

17 A It's something you request, but it's not available
 18 for every member because it's a demand on the PGR
 19 resources. Generally we restrict it to people who hold
 20 positions of leadership.

2:37 PM

21 Q Okay. When they are no longer in positions of
 22 leadership, do they get to keep their patriotguard.org
 23 e-mail address?

24 A Not generally.

2:36 PM

25 Q Okay.

2:38 PM

Page 18

1 Q How many times have you reached a decision to do
 2 that?
 3 A I don't know as I could put a number to it. More
 4 than ten.
 5 Q Okay.
 6 MR. MARR: Once again, object on the basis
 7 of irrelevancy to this whole line of questioning.
 8 MS. BRU: Okay.
 9 Q Can you limit someone's access from the site
 10 itself?
 11 A As far as being able to post?
 12 Q Just getting on there and reading what's
 13 available.
 14 A To some extent.
 15 Q Tell me what you mean by that.
 16 A You can block an ISP address or an IP address, I'm
 17 sorry, but it's nothing that is not usually easily
 18 overcome. The Web is pretty open.
 19 Q Can you block someone's access only from the forum
 20 part of Web site?
 21 A I'm not sure I understand.
 22 MR. MARR: I don't understand the
 23 question.
 24 Q Well, you have a web page then you have a link to
 25 forums, correct?

2:36 PM

1 A Some people have, but it's something we're trying
 2 to limit.

2:38 PM

3 Q Have you ever been involved in -- there were terms
 4 of use that existed prior to your joining the
 5 organization.

2:36 PM

6 A Yes.

2:38 PM

7 Q Are you familiar with those?

8 A To the extent that I probably wrote them three
 9 years ago.

2:36 PM

10 MS. BRU: Are we up to 5?

2:38 PM

11 THE REPORTER: Five is next, yes.

12 Q Do you know if those terms of use have been
 13 altered or amended in any way since they were first put
 14 together?

2:36 PM

15 A Yes, I believe they have.

2:39 PM

16 Q So this document in front of you, Petitioner's
 17 Exhibit 5, dated 11-1-2006, take a look and let me know
 18 if that's an accurate representation of the current
 19 terms of use.

2:37 PM

20 A I wouldn't be able from memory. It's a pretty
 21 long document. I know we have addressed things as
 22 we've learned that weren't covered to start with.

2:39 PM

23 Q Okay. What kind of things come to mind?

24 A Guidelines on the site, topics that can come up
 25 that we never expected to, use of some words and names,

2:39 PM

Page 81	Page 83
<p>1 A Yes.</p> <p>2 Q Is there a PGR office at that address?</p> <p>3 A No.</p> <p>4 Q Do you know whose address that is?</p> <p>5 A I believe it was Jason Wallin's address.</p> <p>6 Q Do you recognize the 970 phone number?</p> <p>7 A Not from top of my head but I do know the area</p> <p>8 code is Colorado.</p> <p>9 Q Okay. How about the e-mail address,</p> <p>10 jason@patriotguard.org?</p> <p>11 A Yes.</p> <p>12 Q Do you recognize that?</p> <p>13 A Yes.</p> <p>14 Q Whose address is that?</p> <p>15 A Jason Wallin's.</p> <p>16 Q Okay. "Legal entity, type, corporation." Do you</p> <p>17 agree that this application was filed on behalf of a</p> <p>18 corporate entity?</p> <p>19 A Yes.</p> <p>20 Q What if that said type, individual?</p> <p>21 A I would probably ask somebody to explain that to</p> <p>22 me.</p> <p>23 Q Go ahead and turn over to Page 2. "Correspondence</p> <p>24 information." You'll see that same Windsor, Colorado,</p> <p>25 address and that signature is signed electronically by</p>	<p>4:19 PM rep for facts relating to defense of the opposition, 4:22 PM</p> <p>2 do you think all these questions are going to be</p> <p>3 best posed to Bonnie?</p> <p>4 MR. MARR: With regard to the filing of</p> <p>4:19 PM the trademark application, I think that Bonnie is 4:22 PM</p> <p>6 the one that has more knowledge, firsthand knowledge</p> <p>7 than Bill does.</p> <p>8 MS. BRU: Okay.</p> <p>9 MR. MARR: I'm sorry, Bonnie or Kurt --</p> <p>4:20 PM no, not Kurt, Bonnie. 4:22 PM</p> <p>11 MS. BRU: Since Bill is designated as</p> <p>12 talking about the opposition, let's go ahead and go</p> <p>13 through these questions and then we can bring Bonnie</p> <p>14 in and she can fill any gaps or give us some extra</p> <p>4:20 PM personal knowledge. I think also Bill did testify 4:22 PM</p> <p>16 what he was prepared to talk about this application,</p> <p>17 so we'll keep going.</p> <p>18 Q If you keep looking through there, the pages</p> <p>19 aren't numbered, but you'll get to a page with a</p> <p>4:20 PM triangular logo. Is that the logo that appeared on PGR 4:23 PM</p> <p>21 merchandise at the time of the filing of this</p> <p>22 application, do you think?</p> <p>23 A I believe so.</p> <p>24 Q Turn to the next page. What is that T-shirt?</p> <p>4:20 PM A From Sturgis. 4:23 PM</p>
Page 82	Page 84
<p>1 Jason B. Wallin as treasurer of Patriot Guard Riders, 4:20 PM</p> <p>2 Incorporated, 11-9-2006. Was Jason Wallin the</p> <p>3 treasurer of Patriot Guard Riders at the time of filing</p> <p>4 of this application?</p> <p>5 A To the best of my knowledge, yes. 4:21 PM</p> <p>6 Q Were you on the board at this time?</p> <p>7 A I was not.</p> <p>8 Q Were you on head shed at this time?</p> <p>9 A Yes.</p> <p>10 Q Do you remember any conversations about filing 4:21 PM</p> <p>11 this trademark application?</p> <p>12 A I do, but nothing with specificity. I know that I</p> <p>13 was told that the trademark had been filed for, but we</p> <p>14 became aware that it had not been.</p> <p>15 Q Okay. Was that around -- 4:21 PM</p> <p>16 A It was pretty much a surprise at that time because</p> <p>17 we were under the impression that the corporation had</p> <p>18 owned the trademark all along.</p> <p>19 Q Okay.</p> <p>20 MR. MARR: Counsel, I believe Bonnie Perry 4:21 PM</p> <p>21 would be a more appropriate person to answer these</p> <p>22 questions since she was on the board and she was on</p> <p>23 the con call referring to this filing -- relating to</p> <p>24 this filing.</p> <p>25 MS. BRU: Bill, is a designated corporate 4:22 PM</p>	<p>Q Does it have the triangular logo? 4:23 PM</p> <p>2 A Certainly.</p> <p>3 Q Where is that?</p> <p>4 A Right here (indicating).</p> <p>4:21 PM Q On the front pocket. Have you seen that shirt in 4:23 PM</p> <p>6 person?</p> <p>7 A Yes, I have one or two.</p> <p>8 Q Since we can't read it, does that logo on the</p> <p>9 front just indicate -- does it say Patriot Guard Riders</p> <p>4:21 PM Riding With Respect? 4:23 PM</p> <p>11 A I will not be able to guarantee. I believe that</p> <p>12 some shirts have been made at one time that did not</p> <p>13 have the S on the Riders.</p> <p>14 Q Okay.</p> <p>4:21 PM A I cannot specify to that one. 4:23 PM</p> <p>16 Q Okay.</p> <p>17 A Patriot Guard Riders general concept, yes.</p> <p>18 Q Let me ask you this. Turn to Page 2. There's a</p> <p>19 specimen description. I'll tell you it's referring to</p> <p>4:21 PM that T-shirt we were just talking about. Says, "This 4:24 PM</p> <p>21 is a sample of a T-Shirt that we sold to help raise</p> <p>22 money for scholarships for the families of fallen</p> <p>23 soldiers." Is that a true statements?</p> <p>24 A That was in 2006. I couldn't tell you with</p> <p>4:22 PM specificity that's where that money went to, what they 4:24 PM</p>

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1 saying that all the profits received from my store go
 2 back to PGR?
 3 A I've seen numerous writings -- several, I won't
 4 say numerous, that says it goes to support PGR and I'm
 5 trying to remember the exact words.
 6 Q I don't want you to guess.
 7 A Everything I've seen was indicated that --
 8 indicated that it went to PGR.
 9 Q Okay. Where did you see that?
 10 A E-mails, posts, forum posts.
 11 Q Do you have any of those in your possession still?
 12 A I believe I have, yes.
 13 Q How many forum posts did you see about whether the
 14 store was for profit?
 15 A That was for profit?
 16 Q (Nods head up and down.)
 17 A That said it was for profit? I believe the one
 18 that caused the uproar, which resulted in Mr. Brown
 19 being removed.
 20 Q Okay. Since you're president of the board of
 21 directors, can you give me a sense of why the
 22 organization feels like the mark, the PGR logo, belongs
 23 to PGR, Incorporated, as opposed to Mr. Brown?
 24 A It represented our mission and what we were
 25 founded under. We still use it today. None of us

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1 board authorized you to do that directly?
 2 A I've made announcements regarding it or shared
 3 information, but there always been threads where people
 4 questioned and ad hoc answers were given on whichever
 5 board member was able to.
 6 Q How does the board decide what information to make
 7 available on the forums about the trademark dispute?
 8 A If you're talking about -- you're asking a
 9 question that I really can't answer.
 10 Q Well, occasionally there's posts from the board on
 11 the forums about the trademark.
 12 A If I was going to publish an announcement, I would
 13 run a draft copy by the board.
 14 Q Would it be voted on?
 15 A To some extent, yes. There would be room for
 16 comments, concern, criticisms, yes.
 17 Q We'll leave the rest of that for Bonnie. What do
 18 you know about the very first PGR store that appeared
 19 on www.patriotguard.org Web site? This would have been
 20 before you were a member. Do you know anything about
 21 it?
 22 A From discussion and learning about this, I
 23 understand that objects were available at least as far
 24 as December for sale using part of our PGR Web site.
 25 And that's really about the extent of what I know.

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1 signed on with what we did with the intention of
 2 putting anything in anyone's pocket. What we do is
 3 strictly about the families and for our members, that's
 4 very sacred. I mean, it's just not something that we
 5 do. If you go on one of our missions and you meet a
 6 family and they look you in the eye with their tears
 7 when they're burying a loved one and say thank you to
 8 someone that's given a few hours of their time, that's
 9 why we do what we do. Not for profit. Most of us
 10 would be deeply offended if somebody offered to pay us.
 11 Q I don't want to downplay anything that you just
 12 said, but I want you to tell me specifically why you
 13 think PGR owns the logo.
 14 A Just the love of the PGR. And PGR, Incorporated,
 15 is an ongoing concern in accordance of what it was
 16 chartered to do and incorporated as.
 17 Q Do you ever post on PGR forums?
 18 A Yes.
 19 Q Have you ever talked about the trademark dispute?
 20 A Certainly.
 21 Q Have you ever posted facts or blurbs or any
 22 information on behalf of the board about the trademark
 23 dispute?
 24 A I'm sure.
 25 Q When this happens, is that something -- has the

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1 Q Those items that were for sale in December of
 2 2005, where were they physically kept?
 3 A I wouldn't know. I know that currently our stores
 4 are -- our items are kept at CDM but that doesn't make
 5 CDM, PGR.
 6 Q Do you know what subsequent PGR store means. What
 7 does that mean to you?
 8 A Following. After.
 9 Q Okay. Would subsequent PGR store, in your
 10 opinion, govern a store that was housed within the
 11 Patriotguard.org Web site?
 12 A From what you've said, I can't draw a conclusion
 13 on that.
 14 Q Okay. I think you testified earlier that at some
 15 point when you clicked on a link to go to a PGR store,
 16 and I using that term generically, it would take you to
 17 an external site?
 18 A Yes.
 19 Q Is that your testimony? Were there times or was
 20 there a period when you went to that external site, the
 21 store still just said PGR store?
 22 A As opposed to?
 23 Q As opposed to Twister's.
 24 A When the store was a link from our home page, it
 25 did not say Twister's that I'm aware of, no.

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1 Q I'm asking for your knowledge about that.
 2 A My understanding would be that the profit would be
 3 what you have left after paying for something.
 4 Q So after paying CDM, that would be profits?
 5 A My understanding, yes.
 6 Q All right. While you were on the board, did the
 7 board ever negotiate with Jeff Brown about a license
 8 for the logo?
 9 A Yes.
 10 Q When was that?
 11 A It was ongoing through about the time that I came
 12 on the board in November of 2007 through maybe April of
 13 2008. There were probably two or three different
 14 offers.
 15 Q Back and forth? Why did the board decide to stop
 16 negotiation with Jeff Brown?
 17 A Because the central issue seemed to be who owned
 18 the mark.
 19 Q Were you on the board in December of 2006?
 20 A No.
 21 MS. BRU: Do you want us to step outside
 22 real quick?
 23 (Following a short recess at 5:15 p.m.,
 24 proceedings continued on the record at 5:19 p.m.)
 25 Q Let's go back on the record. Just a couple more

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MS. BRU: I'm not asking for the content.
 2 There's a lot of evidence that came out today that
 3 is not going to be admissible.
 4 MR. MARR: Okay.
 5 A Could you repeat?
 6 Q As of the filing of the opposition on
 7 December 21st, 2007, since that date, has the board
 8 negotiated Jeff Brown in an attempt to settle this
 9 matter?
 10 A Yes.
 11 Q Was a license ever proposed by Jeff Brown to try
 12 to settle this matter?
 13 A I believe a license was proposed from both sides.
 14 Q From both sides?
 15 A As the PGR has always maintained that they owned
 16 it to start with.
 17 Q Okay.
 18 A I think we demonstrated that with our continued
 19 use of it.
 20 Q Okay. When did the PGR gear store come online?
 21 A I think you already asked that. I told you I
 22 can't answer with specificity. Sometime close to, I
 23 would say -- you asked me not to guess a minute ago.
 24 December '06 to January or so of '07.
 25 Q Before the PGR gear store opened, was there any

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1 questions.
 2 A And I have a question, if I may. I may have
 3 misunderstood something. We were discussing the
 4 negotiations to attempt to settle this and you asked me
 5 something about licensing.
 6 Q Uh-huh.
 7 A Was that in reference to negotiations?
 8 Q Did you ever negotiate -- was a license ever
 9 offered as part of a potential settlement?
 10 MR. MARR: Excuse me. Objection. I
 11 think, to be clear, if you could specify a time
 12 frame.
 13 MS. BRU: I think we are now -- no, I'm
 14 going back and changing the question that I asked.
 15 MR. MARR: Well, I think the witness was
 16 confused as to your question, that's why I'm asking
 17 you to re-ask it.
 18 Q Okay. How about this. Since the opposition was
 19 filed December 21st, did the board negotiate with Jeff
 20 Brown?
 21 A September 21, 2006.
 22 Q December 21st, 2006.
 23 MS. BLUE: 2007.
 24 MR. MARR: Objection. These were
 25 settlement negotiations and they're inadmissible.

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store where a member could buy PGR merchandise that
 2 wasn't owned by Jeff Brown?
 3 MR. MARR: I don't understand the
 4 question.
 5 Q Before PGR gear came online December '06 through
 6 January 2007, was there any place that a member could
 7 go to purchase PGR merchandise from a store that wasn't
 8 owned by Jeff?
 9 MR. MARR: I object. I think you're
 10 assuming facts that are not in evidence. I believe
 11 you asked the question when it -- when the PGR board
 12 came into existence and he testified he couldn't
 13 tell you, but now you've asked the question when it
 14 came --
 15 MS. BRU: He gave me an approximate
 16 timeline. I mean, this is not the forum to be
 17 discussing that.
 18 MR. MARR: Okay.
 19 Q Before December '06, just say the whole month.
 20 A Okay.
 21 Q Before December 1st, 2006, was there any place
 22 that a PGR member could go and buy PGR merchandise that
 23 was not owned by Jeff Brown?
 24 A My difficulty in answering this is because the
 25 entire time up to November of '06 I had assumed that,

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IN THE UNITED STATE PATENT & TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

JEFF BROWN,

Opposer,

v.

PATRIOT GUARD RIDERS, INC.,

Applicant.

)
) OPPOSITION NO.: 91181448
)
) TRADEMARK: PATRIOT GUARD
) RIDERS AND DESIGN
)
) APPLICATION NO.: 77/040379
)
) DATE FILED: NOVEMBER 9, 2006
)
)

EXHIBIT 9
IN SUPPORT OF OPPOSER'S MOTION FOR SUMMARY JUDGMENT

IN THE UNITED STATE PATENT & TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

JEFF BROWN,	)	CANCELLATION NO.:	91181448
)		
Petitioner	)	TRADEMARK:	PATRIOT
	)	GUARD RIDERS AND DESIGN	
v.)		
	)	APPLICATION NO.	77/040379
PATRIOT GUARD RIDERS, INC.,)		
	)	DATE FILED:	NOVEMBER 9,
Applicant	)	2006	

PETITIONER'S RESPONSE TO APPLICANT'S FIRST REQUEST FOR ADMISSION

Petitioner, Jeff Brown, hereby responds to Applicant's First Request for Admissions, as follows:

GENERAL OBJECTIONS

1. Petitioner objects to Applicant's instructions in the First Request for Admissions to the extent they seek to impose duties or obligation upon Petitioner which are beyond the scope and authority of the Federal Rules of Civil Procedure and of the Patent and Trademark Cases Rules of Practice. Petitioner will provide responses to your requests for admission in accordance with the requirements of the Federal Rules of Civil Procedure and of the Patent and Trademark Cases Rules of Practice.

2. Petitioner has not completed discovery in this matter, and therefore, its responses to Applicant's discovery requests may not be complete. Petitioner reserves the right to amend and/or supplement its discovery responses, pursuant to applicable law, and to present additional witnesses, evidence, and documents, as discovery of additional information or documents dictates to be necessary or desirable.

3. Each general objection is specifically incorporated by reference in each response and answer set forth herein. Where more specific problems are presented by a particular request for admission, an objection will be made that describes the additional problem presented.

REQUEST FOR ADMISSION NO. 1: Admit that the term "Patriot Guard Riders" was coined in connection with the formation of the PGR organization after the Kansas American Legion Riders' announcement of the name "Patriot Guard" during a mission to honor Spc. Lucas Frantz on October 27, 2005.

RESPONSE TO REQUEST FOR ADMISSION NO. 1: Petitioner cannot truthfully admit or deny this request for admission. Petitioner remembers creating the term "Patriot Guard Rider" either during or after a mission to Kansas that was in approximately the fall of 2005. Petitioner also recalls hearing the term "Kansas Patriot Guard" during that time frame.

REQUEST FOR ADMISSION NO. 2: Admit that the PGR organization was formed in late October/early November 2005.

RESPONSE TO REQUEST FOR ADMISSION NO. 2: Admitted.

REQUEST FOR ADMISSION NO. 3: Admit that Opposer was a founding member of the PGR organization.

RESPONSE TO REQUEST FOR ADMISSION NO. 3: Admitted, however Petitioner qualifies this admission with the statement that he was not *a* founding member of the organization, but rather was *the* founding member of the organization.

REQUEST FOR ADMISSION NO. 4: Admit that Mr. Hugh Knaus was a founding member of the PGR organization.

RESPONSE TO REQUEST FOR ADMISSION NO. 4: Denied. Mr. Knaus joined the organization a few days after Petitioner began seeking other members.

REQUEST FOR ADMISSION NO. 5: Admit that Mr. Jason Wallin was a founding member of the PGR organization.

RESPONSE TO REQUEST FOR ADMISSION NO. 5: Denied. Mr. Wallin joined the group soon after it was founded by Petitioner. Out of respect and deference to Mr. Wallin's contributions to the group, Petitioner often referred to Mr. Wallin as a founder.

REQUEST FOR ADMISSION NO. 6: Admit that after its formation, the PGR organization, as opposed to Opposer acting as an individual, began a nation-wide campaign to garner support for the PGR organization.

RESPONSE TO REQUEST FOR ADMISSION NO. 6: Denied. Petitioner began a national email campaign to veteran and motorcycle groups across the country. The majority of these efforts were undertaken by Petitioner.

REQUEST FOR ADMISSION NO. 7: Admit that after its formation, the PGR organization, as opposed to Opposer acting as an individual, formulated a mission statement for the PGR organization.

RESPONSE TO REQUEST FOR ADMISSION NO. 7: Denied. Petitioner created the mission statement, with some input from other individuals.

REQUEST FOR ADMISSION NO. 8: Admit that after its formation, Mr. Jason Wallin, and not Opposer, registered the domain name www.patriotguard.org on November 9, 2005 in order to set up a website to garner support for the PGR organization.

RESPONSE TO REQUEST FOR ADMISSION NO. 8: Admitted in part and denied in part. Mr. Wallin registered the domain name and indicated to Petitioner that Petitioner was the owner of the domain name.

REQUEST FOR ADMISSION NO. 9: Admit that after the registration of the domain name www.patriotguard.org, the PGR organization, as opposed to Opposer acting as an individual, built and launched a website in November 2005 in an effort to garner support for the PGR organization.

RESPONSE TO REQUEST FOR ADMISSION NO. 9: Denied. Petitioner and others built and launched the website.

REQUEST FOR ADMISSION NO. 10: Admit that Opposer never:

- a. orally advised other members of the PGR organization that he considered himself, rather than the PGR organization, to be the owner of anyone of the Marks; or
- b. advised, in writing, other members of the PGR organization that he considered himself, rather than the PGR organization, to be the owner of anyone of the Marks.

RESPONSE TO REQUEST FOR ADMISSION NO. 10: Petitioner gives the following response:

- A. Petitioner denies subsection "a."
- B. Petitioner has made a reasonable inquiry to determine whether he ever advised other persons in writing that he was the owner of the Marks and the information he knows or can readily obtain is insufficient to enable him to admit or deny this request.

REQUEST FOR ADMISSION NO. 11: Admit that Opposer never:

- a. orally advised other members of the PGR organization that he considered himself, rather than the PGR organization, to be the only person entitled to use anyone of the Marks; or
- b. advised, in writing, other members of the PGR organization that he considered himself, rather than the PGR organization, to be the only person entitled to use anyone of the Marks.

RESPONSE TO REQUEST FOR ADMISSION NO. 11: Petitioner gives the following response:

- C. Petitioner denies subsection "a," and states that while he gave a license to the organization to use the marks for non-commercial purposes, he told several individuals that he considered himself to have exclusive rights to use the marks for commercial purposes.
- D. Petitioner has made a reasonable inquiry to determine whether he ever advised other persons in writing that he considered himself to have exclusive rights to use the marks for commercial purposes and the information he knows or can readily obtain is insufficient to enable him to admit or deny this request.

REQUEST FOR ADMISSION NO. 12: Admit that Opposer never entered into any type of written agreement with the PGR organization whereby Opposer granted permission to the PGR organization to use anyone of the Marks.

RESPONSE TO REQUEST FOR ADMISSION NO. 12: Admitted.

REQUEST FOR ADMISSION NO. 13: Admit that the PGR organization was not formed to be a sole proprietorship that was run and administered solely by Opposer, as an individual.

RESPONSE TO REQUEST FOR ADMISSION NO. 13: Admitted.

REQUEST FOR ADMISSION NO. 14: Admit that the PGR organization was formed to be an unincorporated, not-for-profit organization.

RESPONSE TO REQUEST FOR ADMISSION NO. 14: Denied. At the time of organization, Petitioner had not yet determined whether or not the organization would be incorporated or organized in another fashion.

REQUEST FOR ADMISSION NO. 15: Admit that after a few months in existence, the PGR organization filed paperwork with the State of Oklahoma, that was signed by Opposer, to become a not-for-profit corporation, named Patriot Guard Riders, Inc. (the PGR corporation).

RESPONSE TO REQUEST FOR ADMISSION NO. 15: Admitted.

REQUEST FOR ADMISSION NO. 16: Admit that Opposer never:

- a. orally advised other members of the PGR corporation, prior to the filing of Opposer's trademark application, that he considered himself, rather than the PGR corporation, to be the owner of anyone of the Marks; or
- b. advised, in writing, other members of the PGR corporation, prior to the filing of Opposer's trademark application, that he considered himself, rather than the PGR corporation, to be the owner of anyone of the Marks.

RESPONSE TO REQUEST FOR ADMISSION NO. 16: Petitioner gives the following response:

- A. Petitioner denies subsection "a."
- B. Petitioner has made a reasonable inquiry to determine whether he ever advised other persons in writing that he was the owner of the Marks and the information

he knows or can readily obtain is insufficient to enable him to admit or deny this request.

REQUEST FOR ADMISSION NO. 17: Admit that Opposer never:

- a. orally advised other members of the PGR corporation, prior to the filing of Opposer's trademark application, that he considered himself, rather than the PGR corporation, to be the only person entitled to use anyone of the Marks; or
- b. advised, in writing, other members of the PGR corporation, prior to the filing of Opposer's trademark application, that he considered himself, rather than the PGR corporation, to be the only person entitled to use anyone of the Marks.

RESPONSE TO REQUEST FOR ADMISSION NO. 17: Petitioner gives the following response:

- A. Petitioner denies subsection "a," and states that while he gave a license to the organization to use the marks for non-commercial purposes, he told several individuals that he considered himself to have exclusive rights to use the marks for commercial purposes.
- B. Petitioner has made a reasonable inquiry to determine whether he ever advised other persons in writing that he considered himself to have exclusive rights to use the marks for commercial purposes and the information he knows or can readily obtain is insufficient to enable him to admit or deny this request.

REQUEST FOR ADMISSION NO. 18: Admit that Opposer never entered into any type of written agreement with the PGR corporation whereby Opposer granted permission to the PGR corporation to use any one of the Marks.

RESPONSE TO REQUEST FOR ADMISSION NO. 18: Admitted.

REQUEST FOR ADMISSION NO. 19: Admit that the PGR corporation was not formed to be a sole proprietorship that was run and administered solely by Opposer, as an individual.

RESPONSE TO REQUEST FOR ADMISSION NO. 19: Petitioner refers Applicant to his response to Request for Admission No. 13.

REQUEST FOR ADMISSION NO. 20: Admit that any rights that the PGR organization had obtained in one or more of the Marks inured to the benefit of the PGR corporation upon its incorporation.

RESPONSE TO REQUEST FOR ADMISSION NO. 20: Denied.

REQUEST FOR ADMISSION NO. 21: Admit that a majority of users of the website www.patriotguard.org, from its launch date until at least the time of Opposer's removal and/or resignation from the Board, would reasonably believe that the owner of one or more of the Marks, as used in connection with the services identified on the website www.patriotguard.org, was Applicant.

RESPONSE TO REQUEST FOR ADMISSION NO. 21: Petitioner cannot respond as to the thoughts or beliefs of the users of the website, and therefore denies this request.

REQUEST FOR ADMISSION NO. 22: Admit that a majority of users of the website www.patriotguard.org, from its launch date until at least the time of Opposer's removal and/or resignation from the Board, would reasonably believe that the owner of one or more of the Marks, as used in connection with the sale of goods on the website www.patriotguard.org, was Applicant.

RESPONSE TO REQUEST FOR ADMISSION NO. 22: Petitioner cannot respond as to the thoughts or beliefs of the users of the website, and therefore denies this request.

REQUEST FOR ADMISSION NO. 23: Admit that a majority of users of the website www.patriotguard.org, from its launch date until at least the time of Opposer's removal and/or resignation from the Board, would not reasonably believe that the owner of one or more of the Marks, as used in connection with the services identified on the website www.patriotguard.org, was Opposer, acting as an individual.

RESPONSE TO REQUEST FOR ADMISSION NO. 23: Petitioner cannot respond as to the thoughts or beliefs of the users of the website, and therefore denies this request.

REQUEST FOR ADMISSION NO. 24: Admit that a majority of users of the website www.patriotguard.org, from its launch date until at least the time of Opposer's removal and/or resignation from the Board, would not reasonably believe that the owner of one or more of the Marks, as used in connection with the sale of goods on the website www.patriotguard.org, was Opposer, acting as an individual.

RESPONSE TO REQUEST FOR ADMISSION NO. 24: Petitioner cannot respond as to the thoughts or beliefs of the users of the website, and therefore denies this request.

REQUEST FOR ADMISSION NO. 25: Admit that the website www.patriotguard.org provided a link to the original PGR store, where users of the website www.patriotguard.org could purchase goods bearing one or more of the Marks.

RESPONSE TO REQUEST FOR ADMISSION NO. 25: Admitted in part and denied in part. Petitioner admits that the link remained on the website until such time as it was removed by the Applicant.

REQUEST FOR ADMISSION NO. 26: Admit that the website www.patriotguard.org did not advise its users that the original PGR store was owned and operated independently of Applicant.

RESPONSE TO REQUEST FOR ADMISSION NO. 26: Denied.

REQUEST FOR ADMISSION NO. 27: Admit that the website www.patriotguard.org did not advise its users that the original PGR store was owned and operated by Opposer and/or PGR Store, LLC.

RESPONSE TO REQUEST FOR ADMISSION NO. 27: Denied.

REQUEST FOR ADMISSION NO. 28: Admit that a user of the website www.patriotguard.org would reasonably believe that the original PGR store was owned and operated by, and affiliated with, Applicant.

RESPONSE TO REQUEST FOR ADMISSION NO. 28: Petitioner cannot respond as to the thoughts or beliefs of the users of the website, and therefore denies this request.

REQUEST FOR ADMISSION NO. 29: Admit that the website www.patriotguard.org did not provide any reason for its users to believe that any of the profits generated by the original PGR store were used for any purpose other than to ultimately support Applicant's Stated Mission.

RESPONSE TO REQUEST FOR ADMISSION NO. 29: Denied.

REQUEST FOR ADMISSION NO. 30: Admit that the website www.patriotguard.org did not provide any reason for its users to believe that any of the profits generated by the original PGR store were ultimately used for Opposer's and/or PGR Store, LLC's personal use.

RESPONSE TO REQUEST FOR ADMISSION NO. 30: Denied.

REQUEST FOR ADMISSION NO. 31: Admit that a user of the website www.patriotguard.org would reasonably believe that any of the profits generated by the original PGR store would ultimately benefit Applicant.

RESPONSE TO REQUEST FOR ADMISSION NO. 31: Petitioner cannot respond as to the thoughts or beliefs of the users of the website, and therefore denies this request.

REQUEST FOR ADMISSION NO. 32: Admit that the original PGR store did not advise its users that the original PGR store was owned and operated independently of Applicant.

RESPONSE TO REQUEST FOR ADMISSION NO. 32: Denied.

REQUEST FOR ADMISSION NO. 33: Admit that the original PGR store did not advise its users that the original PGR store was owned and operated by Opposer and/or PGR Store, LLC.

RESPONSE TO REQUEST FOR ADMISSION NO. 33: Denied.

REQUEST FOR ADMISSION NO. 34: Admit that a customer of the original PGR store would reasonably believe that the original PGR store was owned and operated by, and affiliated with, Applicant.

RESPONSE TO REQUEST FOR ADMISSION NO. 34: Petitioner cannot respond as to the thoughts or beliefs of the customers of the store, and therefore denies this request.

REQUEST FOR ADMISSION NO. 35: Admit that the original PGR store did not provide any reason for its customers to believe that any of the profits generated by the original PGR store were used for any purpose other than to ultimately support Applicant's Stated Mission.

RESPONSE TO REQUEST FOR ADMISSION NO. 35: Denied.

REQUEST FOR ADMISSION NO. 36: Admit that the original PGR store did not provide any reason for its customers to believe that any of the profits generated by the original PGR store were ultimately used for Opposer's and/or PGR Store, LLC's personal use.

RESPONSE TO REQUEST FOR ADMISSION NO. 36: Denied.

REQUEST FOR ADMISSION NO. 37: Admit that a customer of the original PGR store would reasonably believe that any of the profits generated by the original PGR store would ultimately benefit Applicant.

RESPONSE TO REQUEST FOR ADMISSION NO. 37: Petitioner cannot respond as to the thoughts or beliefs of the customers of the store, and therefore denies this request.

REQUEST FOR ADMISSION NO. 38: Admit that invoices for purchased goods from the original PGR store did not give any indication that the original PGR store was owned and operated independently of Applicant.

RESPONSE TO REQUEST FOR ADMISSION NO. 38: Denied.

REQUEST FOR ADMISSION NO. 39: Admit that invoices for purchased goods from the original PGR store did not give any indication that the original PGR store was owned and operated by Opposer and/or PGR Store, LLC.

RESPONSE TO REQUEST FOR ADMISSION NO. 39: Denied.

REQUEST FOR ADMISSION NO. 40: Admit that some customers of the original PGR store received invoices for purchased products from the original PGR store via e-mail.

RESPONSE TO REQUEST FOR ADMISSION NO. 40: Admitted.

REQUEST FOR ADMISSION NO. 41: Admit that the invoices referred to in REQUEST FOR ADMISSION NO. 40 did not identify Opposer, as an individual, in any manner.

RESPONSE TO REQUEST FOR ADMISSION NO. 41: Denied.

REQUEST FOR ADMISSION NO. 42: Admit that the invoices referred to in REQUEST FOR ADMISSION NO. 40 identified the webpage www.patriotguard.org thereon.

RESPONSE TO REQUEST FOR ADMISSION NO. 42: Petitioner has made a reasonable inquiry to determine whether any invoices contained such language and the information he knows or can readily obtain is insufficient to enable him to admit or deny this request. Copies of invoices in Petitioner's possession do not indicate the www.patriotguard.org website

REQUEST FOR ADMISSION NO. 43: Admit that:

- a. the invoices referred to in REQUEST FOR ADMISSION NO. 40 identified "PGR" thereon; and
- b. that "PGR" in REQUEST FOR ADMISSION NO. 43(a) did not refer to Opposer, as an individual.

RESPONSE TO REQUEST FOR ADMISSION NO. 43: Denied.

REQUEST FOR ADMISSION NO. 44: Admit that the e-mail address from at least some of the e-mails identified in REQUEST FOR ADMISSION NO. 40 was pgr@valornet.com.

RESPONSE TO REQUEST FOR ADMISSION NO. 44: Admitted.

REQUEST FOR ADMISSION NO. 45: Admit that the e-mail address identified in REQUEST FOR ADMISSION NO. 44 does not specifically identify Opposer, as an individual, in any manner.

RESPONSE TO REQUEST FOR ADMISSION NO. 45: Admitted.

REQUEST FOR ADMISSION NO. 46: Admit that at least some of the e-mails identified in REQUEST FOR ADMISSION NO. 40 stated "Please make checks or MO payable

to: Patriot Guard Riders 3728 S. Elm Place PMB #137 Broken Arrow, OK 74011-1803 Please include your mailing address. Thank you for your continued commitment - we appreciate it very much. Sincerely, PGR".

RESPONSE TO REQUEST FOR ADMISSION NO. 46: Petitioner has made a reasonable inquiry to determine whether any emails contained such language and the information he knows or can readily obtain is insufficient to enable him to admit or deny this request. Copies of invoices in Petitioner's possession do not indicate the pgr.org website

REQUEST FOR ADMISSION NO. 47: Admit that the e-mails referred to in REQUEST FOR ADMISSION NO. 40 did not refer to Opposer, as an individual, in any manner.

RESPONSE TO REQUEST FOR ADMISSION NO. 47: Petitioner has made a reasonable inquiry to determine whether the emails identified Petitioner and the information he knows or can readily obtain is insufficient to enable him to admit or deny this request.

REQUEST FOR ADMISSION NO. 48: Admit that the website www.patriotguard.org provided a link to the subsequent PGR store, at least until Opposer's removal and/or resignation from the Board, where users of the website www.patriotguard.org could purchase goods bearing one or more of the Marks.

RESPONSE TO REQUEST FOR ADMISSION NO. 48: Petitioner objects to this request as "subsequent PGR store" is not defined. As such, Petitioner denies this request.

REQUEST FOR ADMISSION NO. 49: Admit that the website www.patriotguard.org, at least until Opposer's removal and/or resignation from the Board, did not advise its users that the subsequent PGR store was owned and operated independently of Applicant.

RESPONSE TO REQUEST FOR ADMISSION NO. 49: Petitioner objects to this request as "subsequent PGR store" is not defined. As such, Petitioner denies this request.

REQUEST FOR ADMISSION NO. 50: Admit that the website www.patriotguard.org, at least until Opposer's removal and/or resignation from the Board, did not advise its users that the subsequent PGR store was owned and operated by Opposer and/or PGR Store, LLC.

RESPONSE TO REQUEST FOR ADMISSION NO. 50: Petitioner objects to this request as "subsequent PGR store" is not defined. As such, Petitioner denies this request.

REQUEST FOR ADMISSION NO. 51: Admit that a user of the website www.patriotguard.org, at least until Opposer's removal and/or resignation from the Board, would reasonably believe that the subsequent PGR store was owned and operated by, and affiliated with, Applicant.

RESPONSE TO REQUEST FOR ADMISSION NO. 51: Petitioner objects to this request as "subsequent PGR store" is not defined. As such, Petitioner denies this request.

REQUEST FOR ADMISSION NO. 52: Admit that the website www.patriotguard.org, at least until Opposer's removal and/or resignation from the Board, did not provide any reason for its users to believe that any of the profits generated by the original PGR store were used for any purpose other than to ultimately support Applicant's Stated Mission.

RESPONSE TO REQUEST FOR ADMISSION NO. 52: Denied.

REQUEST FOR ADMISSION NO. 53: Admit that the website www.patriotguard.org, at least until Opposer's removal and/or resignation from the Board, did

not provide any reason for its users to believe that any of the profits generated by the original PGR store were ultimately used for Opposer's and/or PGR Store, LLC's personal use.

RESPONSE TO REQUEST FOR ADMISSION NO. 53: Denied

REQUEST FOR ADMISSION NO. 54: Admit that a user of the website www.patriotguard.org, at least until Opposer's removal and/or resignation from the Board, would reasonably believe that any of the profits generated by the original PGR store would ultimately benefit Applicant.

RESPONSE TO REQUEST FOR ADMISSION NO. 54: Petitioner cannot respond as to the thoughts or beliefs of the users of the website, and therefore denies this request.

REQUEST FOR ADMISSION NO. 55: Admit that the subsequent PGR store, at least until Opposer's removal and/or resignation from the Board, did not advise its users that the subsequent PGR store was owned and operated independently of Applicant.

RESPONSE TO REQUEST FOR ADMISSION NO. 55: Petitioner objects to this request as "subsequent PGR store" is not defined. As such, Petitioner denies this request.

REQUEST FOR ADMISSION NO. 56: Admit that the subsequent PGR store, at least until Opposer's removal and/or resignation from the Board, did not advise its users that the subsequent PGR store was owned and operated by Opposer and/or PGR Store, LLC.

RESPONSE TO REQUEST FOR ADMISSION NO. 56: Petitioner objects to this request as "subsequent PGR store" is not defined. As such, Petitioner denies this request.

REQUEST FOR ADMISSION NO. 57: Admit that a customer of the subsequent PGR store, at least until Opposer's removal and/or resignation from the Board, would reasonably believe that the subsequent PGR store was owned and operated by, and affiliated with, Applicant.

RESPONSE TO REQUEST FOR ADMISSION NO. 57: Petitioner cannot respond as to the thoughts or beliefs of the customers of the store, and therefore denies this request.

REQUEST FOR ADMISSION NO. 58: Admit that the subsequent PGR store, at least until Opposer's removal and/or resignation from the Board, did not provide any reason for its customers to believe that any of the profits generated by the original PGR store were used for any purpose other than to ultimately support Applicant's Stated Mission.

RESPONSE TO REQUEST FOR ADMISSION NO. 58: Petitioner objects to this request as "subsequent PGR store" is not defined. As such, Petitioner denies this request.

REQUEST FOR ADMISSION NO. 59: Admit that the subsequent PGR store, at least until Opposer's removal and/or resignation from the Board, did not provide any reason for its customers to believe that any of the profits generated by the original PGR store were ultimately used for Opposer's and/or PGR Store, LLC's personal use.

RESPONSE TO REQUEST FOR ADMISSION NO. 59: Petitioner objects to this request as "subsequent PGR store" is not defined. As such, Petitioner denies this request.

REQUEST FOR ADMISSION NO. 60: Admit that a customer of the subsequent PGR store, at least until Opposer's removal and/or resignation from the Board, would reasonably believe that any of the profits generated by the original PGR store would ultimately benefit Applicant.

RESPONSE TO REQUEST FOR ADMISSION NO. 60: Petitioner cannot respond as to the thoughts or beliefs of the customers of the store, and therefore denies this request.

REQUEST FOR ADMISSION NO. 61: Admit that invoices for purchased goods from the subsequent PGR store, at least until Opposer's removal and/or resignation from the

Board, did not give any indication that the subsequent PGR store was owned and operated independently of Applicant.

RESPONSE TO REQUEST FOR ADMISSION NO. 61: Petitioner objects to this request as "subsequent PGR store" is not defined. As such, Petitioner denies this request.

REQUEST FOR ADMISSION NO. 62: Admit that invoices for purchased goods from the subsequent PGR store, at least until Opposer's removal and/or resignation from the Board, did not give any indication that the subsequent PGR store was owned and operated by Opposer and/or PGR Store, LLC.

RESPONSE TO REQUEST FOR ADMISSION NO. 62: Petitioner objects to this request as "subsequent PGR store" is not defined. As such, Petitioner denies this request.

REQUEST FOR ADMISSION NO. 63: Admit that the website www.patriotguard.org had a "PGR F AQ" link provided thereon which provided users of the website www.patriotguard.org with information regarding or relating to Applicant, including information regarding the subsequent PGR store.

RESPONSE TO REQUEST FOR ADMISSION NO. 63: Petitioner did not prepare the FAQ portion of the website and is unaware of the content. As such, Petitioner denies the request.

REQUEST FOR ADMISSION NO. 64: Admit that a portion of the information provided by the "PGR F AQ" link identified in REQUEST FOR ADMISSION NO. 63 stated "PGR is funded through purchases made from the PGR Store, public donations, member donations and member businesses who donate."

RESPONSE TO REQUEST FOR ADMISSION NO. 64: Petitioner did not prepare the FAQ portion of the website and is unaware of the content. As such, Petitioner denies the request.

REQUEST FOR ADMISSION NO. 65: Admit that a reader of the statement identified in REQUEST FOR ADMISSION NO. 64 would believe that any of the profits made from purchases through the PGR Store would only be used to help fund Applicant in its Stated Mission.

RESPONSE TO REQUEST FOR ADMISSION NO. 65: Petitioner cannot respond as to the thoughts or beliefs of a hypothetical reader of the FAQ, and therefore denies this request.

REQUEST FOR ADMISSION NO. 66: Admit that a portion of the information provided by the "PGR F AQ" link identified in REQUEST FOR ADMISSION NO. 63 stated "The PGR is NOT a Motorcycle or Riding Club. This back patch is not representative of, nor is it an indication that PGR is a Motorcycle or Riding Club. We do not earn this patch but purchase it from our store."

RESPONSE TO REQUEST FOR ADMISSION NO. 66: Petitioner did not prepare the FAQ portion of the website and is unaware of the content. As such, Petitioner denies the request.

REQUEST FOR ADMISSION NO. 67: Admit that the term "our" provided in the statement from REQUEST FOR ADMISSION NO. 66 referred to Applicant.

RESPONSE TO REQUEST FOR ADMISSION NO. 67: Petitioner did not prepare the FAQ portion of the website and is unaware of the content. As such, Petitioner denies the request.

REQUEST FOR ADMISSION NO. 68: Admit that a reader of the statement identified in REQUEST FOR ADMISSION NO. 66 would believe that the PGR Store was owned and operated by Applicant.

RESPONSE TO REQUEST FOR ADMISSION NO. 68: Petitioner cannot respond as to the thoughts or beliefs of a hypothetical reader of the FAQ, and therefore denies this request.

REQUEST FOR ADMISSION NO. 69: Admit that a portion of the information provided by the "PGR F AQ" link identified in REQUEST FOR ADMISSION NO. 63 stated "The PGR logo and name is copyrighted and restricted to specific use. Anyone wishing to reproduce the logo or name for personal and/or business use in graphics of any form MUST receive permission from National, contact Jeff 'Twister' Brown ibrown@patriotguard.org before using it."

RESPONSE TO REQUEST FOR ADMISSION NO. 69: Petitioner did not prepare the FAQ portion of the website and is unaware of the content. As such, Petitioner denies the request.

REQUEST FOR ADMISSION NO. 70: Admit that the term "National" provided in the statement from REQUEST FOR ADMISSION NO. 69 referred to Applicant.

RESPONSE TO REQUEST FOR ADMISSION NO. 70: Petitioner did not prepare the FAQ portion of the website and is unaware of the content. As such, Petitioner denies the request.

REQUEST FOR ADMISSION NO. 71: Admit that a reader of the statement identified in REQUEST FOR ADMISSION NO. 69 would believe that, in order to reproduce the

PGR logo or name for personal and/or business use in graphics of any form, the reader would have to receive permission from Applicant, and not from Opposer, as an individual.

RESPONSE TO REQUEST FOR ADMISSION NO. 71: Petitioner cannot respond as to the thoughts or beliefs of a hypothetical reader of the FAQ, and therefore denies this request.

REQUEST FOR ADMISSION NO. 72: Admit that all references to the PGR Store in the information by the "PGR F AQ" link identified in REQUEST FOR ADMISSION NO. 63, would lead a reader of the information to believe that the PGR Store was owned and operated by Applicant.

RESPONSE TO REQUEST FOR ADMISSION NO. 72: Petitioner cannot respond as to the thoughts or beliefs of a hypothetical reader of the FAQ, and therefore denies this request.

REQUEST FOR ADMISSION NO. 73: Admit that a portion of the information provided by the "PGR F AQ" link: identified in REQUEST FOR ADMISSION NO. 63 stated "Suggestions for the PGR Store can be posted in the National Forums under the heading Patriot Guard Store."

RESPONSE TO REQUEST FOR ADMISSION NO. 73: Petitioner did not prepare the FAQ portion of the website and is unaware of the content. As such, Petitioner denies the request.

REQUEST FOR ADMISSION NO. 74: Admit that the "Patriot Guard Store" referred to in REQUEST FOR ADMISSION NO. 73 included the subsequent PGR store.

RESPONSE TO REQUEST FOR ADMISSION NO. 74: Petitioner did not prepare the FAQ portion of the website and is unaware of the content. As such, Petitioner denies the request.

REQUEST FOR ADMISSION NO. 75: Admit that the subsequent PGR store benefited from Applicant's website www.patriotguard.org having National Forums where users could post suggestions for the subsequent PGR store.

RESPONSE TO REQUEST FOR ADMISSION NO. 75: Petitioner objects to this request as "subsequent PGR store" is not defined. As such, Petitioner denies this request.

REQUEST FOR ADMISSION NO. 76: Admit that the subsequent PGR store, on the website www.patriotguardstore.org, provided a "PGR Home" link: that would redirect users to the website www.patriotguard.org.

RESPONSE TO REQUEST FOR ADMISSION NO. 76: Petitioner objects to this request as "subsequent PGR store" is not defined. As such, Petitioner denies this request.

REQUEST FOR ADMISSION NO. 77: Admit that Twister's PGR store, on the website www.patriotguardstore.org, provided a "Main PGR Site" link: that functioned to redirect users to the website www.patriotguard.org.

RESPONSE TO REQUEST FOR ADMISSION NO. 77: Admitted.

REQUEST FOR ADMISSION NO. 78: Admit that the website www.patriotguardstore.org posted the following notice for a period of time: "Regarding the PGR Online Store: A couple of people have asked about having a friend offer to duplicate some of our stuff for free to help the cause. Our PGR name and log is copyrighted for a reason. The revenue generated from the sale of PGR products enables us to operate this site and continue to grow the organization without any dues, donations or fees. We also have other plans down the road. All

associations have their own stores (VFW, AL, RFTW, etc.) and do not allow reproductions for the same reasons. We've also tried to keep our pricing lower than comparable products through other associations. I hope you understand and support this policy. Best regards, Jeff 'Twister' Brown".

RESPONSE TO REQUEST FOR ADMISSION NO. 78: Admitted.

REQUEST FOR ADMISSION NO. 79: Admit that the notice identified in REQUEST FOR ADMISSION NO. 78 identified Opposer as the person writing and/or posting the notice.

RESPONSE TO REQUEST FOR ADMISSION NO. 79: Admitted.

REQUEST FOR ADMISSION NO. 80: Admit that users of the website www.patriotguardstore.org, upon reading the notice identified in REQUEST FOR ADMISSION NO. 78, would reasonably believe that references to "our", "us" and "we" in the notice would refer to Applicant.

RESPONSE TO REQUEST FOR ADMISSION NO. 80: Petitioner cannot respond as to the thoughts or beliefs of the users of the website, and therefore denies this request.

REQUEST FOR ADMISSION NO. 81: Admit that users of the website www.patriotguardstore.org, upon reading the notice identified in REQUEST FOR ADMISSION NO. 78, would not reasonably believe that references to "our", "us" and "we" in the notice would refer to any of Opposer, Opposer's wife, Ms. Bonnie Brown, or PGR Store, LLC.

RESPONSE TO REQUEST FOR ADMISSION NO. 81: Petitioner cannot respond as to the thoughts or beliefs of the users of the website, and therefore denies this request.

REQUEST FOR ADMISSION NO. 82: Admit that a majority of users of the website www.patriotguardstore.org, from its launch date until at least the time of Opposer's removal

and/or resignation from the Board, would reasonably believe that the owner of one or more of the Marks, as used in connection with the sale of goods on the website www.patriotguardstore.org, was Applicant.

RESPONSE TO REQUEST FOR ADMISSION NO. 82: Petitioner cannot respond as to the thoughts or beliefs of the users of the website, and therefore denies this request.

REQUEST FOR ADMISSION NO. 83: Admit that a majority of users of the website www.patriotguardstore.org, from its launch date until at least the time of Opposer's removal and/or resignation from the Board, would not reasonably believe that the owner of one or more of the Marks, as used in connection with the sale of goods on the website www.patriotguardstore.org, was Opposer, acting as an individual.

RESPONSE TO REQUEST FOR ADMISSION NO. 83: Petitioner cannot respond as to the thoughts or beliefs of the users of the website, and therefore denies this request.

REQUEST FOR ADMISSION NO. 84: Admit that the top level domain .org is generally associated with an organization, and not an individual.

RESPONSE TO REQUEST FOR ADMISSION NO. 84: Denied.

REQUEST FOR ADMISSION NO. 85: Admit that the top level domain .org is generally associated with non-profit organizations.

RESPONSE TO REQUEST FOR ADMISSION NO. 85: Denied.

REQUEST FOR ADMISSION NO. 86: Admit that most users of the website www.patriotguardstore.org would believe that the subsequent PGR store was owned and operated by Applicant because it used the top level domain .org.

RESPONSE TO REQUEST FOR ADMISSION NO. 86: Petitioner cannot respond as to the thoughts or beliefs of the users of the website, and therefore denies this request.

REQUEST FOR ADMISSION NO. 87: Admit that most users of the website www.patriotguardstore.org would believe that the website was associated with a non-profit organization because it used the top level domain .org.

RESPONSE TO REQUEST FOR ADMISSION NO. 87: Petitioner cannot respond as to the thoughts or beliefs of the users of the website, and therefore denies this request.

REQUEST FOR ADMISSION NO. 88: Admit that most users of the website www.patriotguardstore.org would not believe that the website was owned and operated by a for-profit entity because it used the top level domain .org.

RESPONSE TO REQUEST FOR ADMISSION NO. 88: Petitioner cannot respond as to the thoughts or beliefs of the users of the website, and therefore denies this request.

REQUEST FOR ADMISSION NO. 89: Admit that prior to Opposer's removal and/or resignation from the Board, Opposer refused to produce the books for the original PGR store and for the subsequent PGR store to the other members of the Board upon their request.

RESPONSE TO REQUEST FOR ADMISSION NO. 89: Admitted in part and denied in part. Petitioner objects to this request as "subsequent PGR store" is not defined. As such, Petitioner denies this request. Petitioner admits that Petitioner did not produce financial records related to the store to the PGR Board of Directors. However, Petitioner did voluntarily release all personal and business financials to the PGR accountant, Mr. Jon Tatum of Tatum & Associates, for him to audit, with the stipulation that he report to Mr. Bill Lines, then PGR Executive Director, only if he found any irregularities. His report to Mr. Lines was that Petitioner's books were in order.

REQUEST FOR ADMISSION NO. 90: Admit that upon Opposer refusing to produce the books for the original PGR store and for the subsequent POR store, that the Board, other than Opposer, first definitively learned:

- a. that the original PGR store and the subsequent PGR store did not provide all of their profits to Applicant;
- b. that all of the profits from the original PGR store and the subsequent PGR store went to either Opposer and/or PGR Store, LLC; and
- c. that Opposer and/or PGR Store, LLC, after receiving the profits from the original PGR store and the subsequent PGR store, Opposer and/or PGR Store, LLC, in its sale discretion, then decided how much of the profits to redirect back to Applicant.

RESPONSE TO REQUEST FOR ADMISSION NO. 90: Denied.

REQUEST FOR ADMISSION NO. 91: Admit that a majority of Applicant's members would reasonably believe that use of any one of the Marks would be done on behalf of, and inure to the benefit of, Applicant.

RESPONSE TO REQUEST FOR ADMISSION NO. 91: Petitioner cannot respond as to the thoughts or beliefs of Applicant's members, and therefore denies this request.

REQUEST FOR ADMISSION NO. 92: Admit that a majority of Applicant's members would not reasonably believe that use of anyone of the Marks would be done on behalf of, and inure to the benefit of, Opposer, as an individual.

RESPONSE TO REQUEST FOR ADMISSION NO. 92: Petitioner cannot respond as to the thoughts or beliefs of such hypothetical persons, and therefore denies this request.

REQUEST FOR ADMISSION NO. 93: Admit that a majority of persons, who are, or were not one of, Applicant's members, who personally attended one of Applicant's missions, or who otherwise heard about one of Applicant's missions, would reasonably believe that use of anyone of the Marks would be done on behalf of, and inure to the benefit of, Applicant.

RESPONSE TO REQUEST FOR ADMISSION NO. 93: Petitioner cannot respond as to the thoughts or beliefs of such hypothetical persons, and therefore denies this request.

REQUEST FOR ADMISSION NO. 94: Admit that a majority of persons, who are, or were not one of, Applicant's members, who personally attended one of Applicant's missions, or who otherwise heard about one of Applicant's missions, would not reasonably believe that use of anyone of the Marks would be done on behalf of, and inure to the benefit of, Opposer, as an individual.

RESPONSE TO REQUEST FOR ADMISSION NO. 94: Petitioner cannot respond as to the thoughts or beliefs of such hypothetical persons, and therefore denies this request.

REQUEST FOR ADMISSION NO. 95: Admit that Applicant's first trademark application was filed with the United States Patent and Trademark Office prior to the filing of Opposer's trademark application with the United States Patent and Trademark Office.

RESPONSE TO REQUEST FOR ADMISSION NO. 95: Petitioner admits that Applicant's application was filed before Petitioner's application, but notes that the applications were filed almost contemporaneously, having been filed on the same date and within minutes of each other.

REQUEST FOR ADMISSION NO. 96: Admit that the records of the United States Patent and Trademark Office indicate that Applicant's first trademark application was filed on

behalf of the Patriot Guard Riders corporation by Mr. Jason D. Wallin, the Treasurer for the Patriot Guard Riders corporation.

RESPONSE TO REQUEST FOR ADMISSION NO. 96: Admitted.

REQUEST FOR ADMISSION NO. 97: Admit that at the time of filing Applicant's first trademark application, Mr. Jason D. Wallin was the Treasurer for the Patriot Guard Riders corporation.

RESPONSE TO REQUEST FOR ADMISSION NO. 97: Admitted.

REQUEST FOR ADMISSION NO. 98: Admit that the Board authorized Mr. Jason D. Wallin to file Applicant's first trademark application on behalf of the Patriot Guard Riders corporation.

RESPONSE TO REQUEST FOR ADMISSION NO. 98: Petitioner cannot respond as to the whether the Board did or did not authorize this application, and therefore denies this request.

REQUEST FOR ADMISSION NO. 99: Admit that Opposer, in his Opposition, did not have any factual bases for alleging that Mr. Jason D. Wallin did not have the authorization of the Board to file Applicant's first trademark application on behalf of the Patriot Guard Riders corporation.

RESPONSE TO REQUEST FOR ADMISSION NO. 99: Denied.

REQUEST FOR ADMISSION NO. 100: Admit that Mr. Jason D. Wallin's dismissal from the Board after the filing of Applicant's first trademark application has no bearing on whether the Patriot Guard Riders corporation is entitled to have Applicant's first trademark application registered.

RESPONSE TO REQUEST FOR ADMISSION NO. 100: Denied.

REQUEST FOR ADMISSION NO. 101: Admit that Opposer's trademark application identifies Opposer as having signed Opposer's trademark application and that Opposer identified his position in the Signatory Block as "Executive Director".

RESPONSE TO REQUEST FOR ADMISSION NO. 101: Admitted in part and denied in part. When Petitioner filed the application, he intended to file the application in his individual capacity, not as a formal representative of any entity. Petitioner was directed to refer to himself as Executive Director by counsel, nonetheless both counsel and Petitioner intended for the application to be filed in Petitioner's individual capacity.

REQUEST FOR ADMISSION NO. 102: Admit that Opposer held the title of "Executive Director" of the Board prior to his removal and/or resignation from the Board.

RESPONSE TO REQUEST FOR ADMISSION NO. 102: Admitted.

REQUEST FOR ADMISSION NO. 103: Admit that since the formation of PGR Store, LLC, Opposer, as an individual, did not use anyone of the Marks in connection with the sale of goods identified in Opposer's trademark application.

RESPONSE TO REQUEST FOR ADMISSION NO. 103: Denied.

REQUEST FOR ADMISSION NO. 104: Admit that since the formation of PGR Store, LLC, PGR Store, LLC has used one or more of the Marks in connection with the sale of goods identified in Opposer's trademark application.

RESPONSE TO REQUEST FOR ADMISSION NO. 104: Admitted.

REQUEST FOR ADMISSION NO. 105: Admit that Opposer's trademark application does not state that use of one or more of the Marks in connection with the sale of goods identified therein was done through PGR Store, LLC.

RESPONSE TO REQUEST FOR ADMISSION NO. 105: Admitted. PGR Store, LLC was not in existence at the time Petitioner began using the mark. Petitioner has given PGR STORE LLC a license to use the marks.

REQUEST FOR ADMISSION NO. 106: Admit that at the time of filing Opposer's trademark application, Opposer knew that Applicant had the right to use one or more of the Marks in commerce.

RESPONSE TO REQUEST FOR ADMISSION NO. 106: Denied.

REQUEST FOR ADMISSION NO. 107: Admit that prior to the filing of Opposer's trademark application, Opposer never gave any written indication to Applicant that Opposer believed that he, as an individual, was the owner of one or more of the Marks instead of Applicant.

RESPONSE TO REQUEST FOR ADMISSION NO. 107: Petitioner has made a reasonable inquiry to determine whether such indication was ever made in writing and the information he knows or can readily obtain is insufficient to enable him to admit or deny this request.

REQUEST FOR ADMISSION NO. 108: Admit that prior to the filing of Opposer's trademark application, Opposer never gave any oral indication to Applicant that Opposer believed that he, as an individual, was the owner of one or more of the Marks instead of Applicant.

RESPONSE TO REQUEST FOR ADMISSION NO. 108: Denied.

REQUEST FOR ADMISSION NO. 109: Admit that prior to the filing of Opposer's trademark application, Opposer never gave any written indication to Applicant that Opposer

believed that he, as an individual, was entitled to use one or more of the Marks instead of Applicant.

RESPONSE TO REQUEST FOR ADMISSION NO. 109: Petitioner has made a reasonable inquiry to determine whether such indication was ever made in writing and the information he knows or can readily obtain is insufficient to enable him to admit or deny this request.

REQUEST FOR ADMISSION NO. 110: Admit that prior to the filing of Opposer's trademark application, Opposer never gave any oral indication to Applicant that Opposer believed that he, as an individual, was entitled to use one or more of the Marks instead of Applicant.

RESPONSE TO REQUEST FOR ADMISSION NO. 110: Denied.

REQUEST FOR ADMISSION NO. 111: Admit that on November 6, 2006, just three days prior to the filing of Opposer's trademark application, Opposer sent an e-mail indicating that he intended to close the subsequent PGR store.

RESPONSE TO REQUEST FOR ADMISSION NO. 111: Admitted in part and denied in part. In an effort to settle this matter, Petitioner made several different offers, one of which included an offer to close the store.

REQUEST FOR ADMISSION NO. 112: Admit that prior to the filing of Opposer's trademark application, Opposer never objected in writing to Applicant's use of one or more of the Marks.

RESPONSE TO REQUEST FOR ADMISSION NO. 112: Admitted.

REQUEST FOR ADMISSION NO. 113: Admit that prior to the filing of the present Opposition, Opposer never objected in writing to Applicant's use of one or more of the Marks.

RESPONSE TO REQUEST FOR ADMISSION NO. 113: Admitted.

REQUEST FOR ADMISSION NO. 114: Admit that prior to the filing of Opposer's trademark application, Opposer never orally objected to Applicant's use of one or more of the Marks.

RESPONSE TO REQUEST FOR ADMISSION NO. 114: Admitted.

REQUEST FOR ADMISSION NO. 115: Admit that prior to the filing of the present Opposition, Opposer never orally objected to Applicant's use of one or more of the Marks.

RESPONSE TO REQUEST FOR ADMISSION NO. 115: Admitted.

REQUEST FOR ADMISSION NO. 116: Admit that prior to the filing of Opposer's trademark application, Opposer never offered a written license to Applicant to use one or more of the Marks with the understanding that Applicant's use of one or more of the Marks would inure to the benefit of Opposer.

RESPONSE TO REQUEST FOR ADMISSION NO. 116: Admitted.

REQUEST FOR ADMISSION NO. 117: Admit that prior to the filing of the present Opposition, Opposer never offered a written license to Applicant to use one or more of the Marks with the understanding that Applicant's use of one or more of the Marks would inure to the benefit of Opposer.

RESPONSE TO REQUEST FOR ADMISSION NO. 117: Denied.

REQUEST FOR ADMISSION NO. 118: Admit that prior to the filing of Opposer's trademark application, Opposer never offered an oral license to use one or more of the Marks to Applicant with the understanding that Applicant's use of one or more of the Marks would inure to the benefit of Opposer.

RESPONSE TO REQUEST FOR ADMISSION NO. 118: Denied.

REQUEST FOR ADMISSION NO. 119: Admit that prior to the filing of the present Opposition, Opposer never offered an oral license to use one or more of the Marks to Applicant with the understanding that Applicant's use of one or more of the Marks would inure to the benefit of Opposer.

RESPONSE TO REQUEST FOR ADMISSION NO. 119: Denied.

REQUEST FOR ADMISSION NO. 120: Admit that Opposer, as an individual, never controlled Applicant's use of anyone of the Marks with respect to the nature and quality of the services in connection with which any one of the Marks were used.

RESPONSE TO REQUEST FOR ADMISSION NO. 120: Denied.

REQUEST FOR ADMISSION NO. 121: Admit that Opposer, as an individual, never controlled Applicant's use of anyone of the Marks with respect to the nature and quality of the goods on which anyone of the Marks were used.

RESPONSE TO REQUEST FOR ADMISSION NO. 121: Denied.

REQUEST FOR ADMISSION NO. 122: Admit that the Opposition states that the mark PATRIOT GUARD RIDERS RIDING WITH RESPECT was first used in connection with the "organization's services".

RESPONSE TO REQUEST FOR ADMISSION NO. 122: Admitted to the extent that Opposer did not view the organization's interests as different from his own at the time of first use.

REQUEST FOR ADMISSION NO. 123: Admit that the "organization's services" identified in the Opposition referred to Applicant's services, and not Opposer's individual services.

RESPONSE TO REQUEST FOR ADMISSION NO. 123: Admitted to the extent that Opposer did not view the organization's interests as different from his own at the time of first use.

REQUEST FOR ADMISSION NO. 124: Admit that Bonnie Brown, Opposer's wife, registered a Limited Liability Company named PGR Store on February 13, 2006.

RESPONSE TO REQUEST FOR ADMISSION NO. 124: Admitted.

REQUEST FOR ADMISSION NO. 125: Admit that an electronic filing was submitted to the Oklahoma Secretary of State under the name Patriot Guard Riders Inc., a not-for-profit corporation, on February 21, 2006.

RESPONSE TO REQUEST FOR ADMISSION NO. 125: Admitted.

REQUEST FOR ADMISSION NO. 126: Admit that Opposer was named as the Agent for Patriot Guard Riders Inc. in the electronic filing identified in REQUEST FOR ADMISSION NO. 125.

RESPONSE TO REQUEST FOR ADMISSION NO. 126: Admitted.

REQUEST FOR ADMISSION NO. 127: Admit that Opposer was named as an incorporator for Patriot Guard Riders Inc. in the electronic filing identified in REQUEST FOR ADMISSION NO. 125.

RESPONSE TO REQUEST FOR ADMISSION NO. 127: Admitted.

REQUEST FOR ADMISSION NO. 128: Admit that since at least December 10, 2006 to at least February 6, 2007, the website www.patriotguardstore.org included an Announcement stating: "Contrary to what you may have heard, the store has no plans to close. We will remain open as long as the membership continues to support our efforts and good name."

RESPONSE TO REQUEST FOR ADMISSION NO. 128: Admitted in part and denied in part. Petitioner is aware that a similar or identical statement did appear on the website, but does not know the time period during which the statement appeared. Petitioner has made a reasonable inquiry to determine such dates and the information he knows or can readily obtain is insufficient to enable him to admit or deny this request.

REQUEST FOR ADMISSION NO. 129: Admit that since at least April 12, 2007 to at least August 9, 2007, the website www.patriotguardstore.org included an Announcement stating: "Contrary to what you may have heard, Twister's PGR Store has no plans to close. We will remain open as long as the membership continues to support our efforts and good name."

RESPONSE TO REQUEST FOR ADMISSION NO. 129: Admitted in part and denied in part. Petitioner is aware that a similar or identical statement did appear on the website, but does not know the time period during which the statement appeared. Petitioner has made a reasonable inquiry to determine such dates and the information he knows or can readily obtain is insufficient to enable him to admit or deny this request.

REQUEST FOR ADMISSION NO. 130: Admit that Opposer, as an individual, did not first use one or more of the Marks in connection with metal license plates, as early as December 9, 2005.

RESPONSE TO REQUEST FOR ADMISSION NO. 130: Denied.

REQUEST FOR ADMISSION NO. 131: Admit that Applicant first used one or more of the Marks in connection with metal license plates, as early as December 9, 2005.

RESPONSE TO REQUEST FOR ADMISSION NO. 131: Denied.

REQUEST FOR ADMISSION NO. 132: Admit that Opposer, as an individual, did not first use one or more of the Marks in commerce in connection with metal license plates, as early as December 9, 2005.

RESPONSE TO REQUEST FOR ADMISSION NO. 132: Denied.

REQUEST FOR ADMISSION NO. 133: Admit that Applicant first used one or more of the Marks in commerce in connection with metal license plates, as early as December 9, 2005.

RESPONSE TO REQUEST FOR ADMISSION NO. 133: Denied.

REQUEST FOR ADMISSION NO. 134: Admit that Opposer, as an individual, did not first use one or more of the Marks in connection with ornamental pins, as early as December 14, 2005.

RESPONSE TO REQUEST FOR ADMISSION NO. 134: Denied.

REQUEST FOR ADMISSION NO. 135: Admit that Applicant first used one or more of the Marks in connection with ornamental pins, as early as December 14, 2005.

RESPONSE TO REQUEST FOR ADMISSION NO. 135: Denied.

REQUEST FOR ADMISSION NO. 136: Admit that Opposer, as an individual, did not first use one or more of the Marks in commerce in connection with ornamental pins, as early as December 14, 2005.

RESPONSE TO REQUEST FOR ADMISSION NO. 136: Denied.

REQUEST FOR ADMISSION NO. 137: Admit that Applicant first used one or more of the Marks in connection with ornamental pins, as early as December 14, 2005.

RESPONSE TO REQUEST FOR ADMISSION NO. 137: Denied.

REQUEST FOR ADMISSION NO. 138: Admit that Opposer, as an individual, did not first use one or more of the Marks in connection with cloth banners and/or fabric flags, as early as November 29, 2005.

RESPONSE TO REQUEST FOR ADMISSION NO. 138: Denied.

REQUEST FOR ADMISSION NO. 139: Admit that Applicant first used one or more of the Marks in connection with cloth banners and/or fabric flags, as early as November 29, 2005.

RESPONSE TO REQUEST FOR ADMISSION NO. 139: Denied.

REQUEST FOR ADMISSION NO. 140: Admit that Opposer, as an individual, did not first use one or more of the Marks in commerce in connection with cloth banners and/or fabric flags, as early as November 29, 2005.

RESPONSE TO REQUEST FOR ADMISSION NO. 140: Denied.

REQUEST FOR ADMISSION NO. 141: Admit that Applicant first used one or more of the Marks in commerce in connection with cloth banners and/or fabric flags, as early as November 29, 2005.

RESPONSE TO REQUEST FOR ADMISSION NO. 141: Denied.

REQUEST FOR ADMISSION NO. 142: Admit that Opposer, as an individual, did not first use one or more of the Marks in connection with hats and/or short-sleeved or long-sleeved t-shirts, as early as December 8, 2005.

RESPONSE TO REQUEST FOR ADMISSION NO. 142: Denied.

REQUEST FOR ADMISSION NO. 143: Admit that Applicant first used one or more of the Marks in connection with hats and/or short-sleeved or long-sleeved t-shirts, as early as December 8, 2005.

RESPONSE TO REQUEST FOR ADMISSION NO. 143: Denied.

REQUEST FOR ADMISSION NO. 144: Admit that Opposer, as an individual, did not first use one or more of the Marks in commerce in connection with hats and/or short-sleeved or long-sleeved t-shirts, as early as December 8, 2005.

RESPONSE TO REQUEST FOR ADMISSION NO. 144: Denied.

REQUEST FOR ADMISSION NO. 145: Admit that Applicant first used one or more of the Marks in commerce in connection with hats and/or short-sleeved or long-sleeved t-shirts, as early as December 8, 2005.

RESPONSE TO REQUEST FOR ADMISSION NO. 145: Denied.

REQUEST FOR ADMISSION NO. 146: Admit that Opposer, as an individual, did not first use one or more of the Marks in connection with embroidered patches for clothing, as early as December 23, 2005.

RESPONSE TO REQUEST FOR ADMISSION NO. 146: Denied.

REQUEST FOR ADMISSION NO. 147: Admit that Applicant first used one or more of the Marks in connection with embroidered patches for clothing, as early as December 23, 2005.

RESPONSE TO REQUEST FOR ADMISSION NO. 147: Denied.

REQUEST FOR ADMISSION NO. 148: Admit that Opposer, as an individual, did not first use one or more of the Marks in commerce in connection with embroidered patches for clothing, as early as December 23, 2005.

RESPONSE TO REQUEST FOR ADMISSION NO. 148: Denied.

REQUEST FOR ADMISSION NO. 149: Admit that Applicant first used one or more of the Marks in commerce in connection with embroidered patches for clothing, as early as December 23, 2005.

RESPONSE TO REQUEST FOR ADMISSION NO. 149: Denied.

REQUEST FOR ADMISSION NO. 150: Admit that Opposer, as an individual, did not first use one or more of the Marks in connection with association services, namely, promoting the interests of families of deceased military members and families of deceased veterans, as early as October 27, 2005.

RESPONSE TO REQUEST FOR ADMISSION NO. 150: Denied.

REQUEST FOR ADMISSION NO. 151: Admit that Applicant first used one or more of the Marks in connection with association services, namely, promoting the interests of families of deceased military members and families of deceased veterans, as early as October 27, 2005.

RESPONSE TO REQUEST FOR ADMISSION NO. 151: Denied.

REQUEST FOR ADMISSION NO. 152: Admit that Opposer identified October 27, 2005 as the date of Opposer's first use of the mark PATRIOT GUARD RIDER in connection with association services, namely, promoting the interests of families of deceased military members and families of deceased veterans in Opposer's trademark application, because October 27, 2005 was the date of a mission to honor Spc. Lucas Frantz.

RESPONSE TO REQUEST FOR ADMISSION NO. 152: Denied.

REQUEST FOR ADMISSION NO. 153: Admit that the Kansas American Legion Riders, and not Opposer, organized and planned the mission of October 27, 2005 to honor Spc. Lucas Frantz.

RESPONSE TO REQUEST FOR ADMISSION NO. 153: Petitioner has made a reasonable inquiry to determine the organizer of the event and the information he knows or can readily obtain is insufficient to enable him to admit or deny this request.

REQUEST FOR ADMISSION NO. 154: Admit that the name PATRIOT GUARD was established and announced on October 27, 2005 at the mission to honor Spc. Lucas Frantz by the Kansas American Legion Riders, and not by Opposer.

RESPONSE TO REQUEST FOR ADMISSION NO. 154: Admitted in part and denied in part. To the extent that Petitioner does not recall the particular mission when the term was coined, the request is denied. Petitioner admits hearing another individual use the words "Kansas," "patriot," and "guard." Petitioner has made a reasonable inquiry to determine the date of the mission and the information he knows or can readily obtain is insufficient to enable him to admit or deny.

REQUEST FOR ADMISSION NO. 155: Admit that any use (as defined by the United States Trademark Laws) of the mark PATRIOT GUARD RIDER in connection with association services, namely, promoting the interests of families of deceased military members and families of deceased veterans, was not done until after October 27, 2005.

RESPONSE TO REQUEST FOR ADMISSION NO. 155: Petitioner does not recall whether the term was ever used prior to October 27, 2005. Petitioner has made a reasonable inquiry to determine whether the term was ever used prior to October 27, 2005 and the information he knows or can readily obtain is insufficient to enable him to admit or deny.

REQUEST FOR ADMISSION NO. 156: Admit that Opposer, as an individual, did not first use one or more of the Marks in commerce in connection with association services, namely, promoting the interests of families of deceased military members and families of deceased veterans, as early as November 9, 2005.

RESPONSE TO REQUEST FOR ADMISSION NO. 156: Denied.

REQUEST FOR ADMISSION NO. 157: Admit that Applicant first used one or more of the Marks in commerce in connection with association services, namely, promoting the interests of families of deceased military members and families of deceased veterans, as early as November 9, 2005.

RESPONSE TO REQUEST FOR ADMISSION NO. 157: Denied.

REQUEST FOR ADMISSION NO. 158: Admit that Opposer identified November 9, 2005 as the date of Opposer's first use of the mark PATRIOT GUARD RIDER in commerce in connection with association services, namely, promoting the interests of families of deceased military members and families of deceased veterans in Opposer's trademark application, was because November 9, 2005 was the date the website www.patriotguard.org was registered.

RESPONSE TO REQUEST FOR ADMISSION NO. 158: Denied.

REQUEST FOR ADMISSION NO. 159: Admit that the information to be provided to the public via the website www.patriotguard.org was not accessible to the public until after November 9, 2005.

RESPONSE TO REQUEST FOR ADMISSION NO. 159: Admitted.

REQUEST FOR ADMISSION NO. 160: Admit that any use in commerce (as defined by the United States Trademark Laws) of the mark PATRIOT GUARD RIDER in connection with association services, namely, promoting the interests of families of deceased military members and families of deceased veterans, was not done until after November 9, 2005.

RESPONSE TO REQUEST FOR ADMISSION NO. 160: Denied.

REQUEST FOR ADMISSION NO. 161: Admit that Opposer, as an individual, did not first use one or more of the Marks in connection with organizing and conducting support groups in the field of combat veterans and their families, as early as November 11, 2005.

RESPONSE TO REQUEST FOR ADMISSION NO. 161: Denied.

REQUEST FOR ADMISSION NO. 162: Admit that Applicant first used one or more of the Marks in connection with organizing and conducting support groups in the field of combat veterans and their families, as early as November 11, 2005.

RESPONSE TO REQUEST FOR ADMISSION NO. 162: Denied.

REQUEST FOR ADMISSION NO. 163: Admit that Opposer, as an individual, did not first use one or more of the Marks in commerce in connection with organizing and conducting support groups in the field of combat veterans and their families, as early as June 1, 2006.

RESPONSE TO REQUEST FOR ADMISSION NO. 163: Denied.

REQUEST FOR ADMISSION NO. 164: Admit that Applicant first used one or more of the Marks in commerce in connection with organizing and conducting support groups in the field of combat veterans and their families, as early as June 1, 2006.

RESPONSE TO REQUEST FOR ADMISSION NO. 164: Denied.

REQUEST FOR ADMISSION NO. 165: Admit that Opposer identified John Jacobs as his attorney in Opposer's trademark application.

RESPONSE TO REQUEST FOR ADMISSION NO. 165: Admitted.

REQUEST FOR ADMISSION NO. 166: Admit that Opposer identified John Jacobs as the person to whom correspondence regarding Opposer's trademark application should be sent.

RESPONSE TO REQUEST FOR ADMISSION NO. 166: Admitted.

REQUEST FOR ADMISSION NO. 167: Admit that in an e-mail dated October 27, 2006, Opposer solicited legal advice on behalf of the PGR corporation from John Jacobs.

RESPONSE TO REQUEST FOR ADMISSION NO. 167: Petitioner objects to this request as it seeks information protected by the attorney/client privilege.

REQUEST FOR ADMISSION NO. 168: Admit that in an e-mail dated October 30, 2006, John Jacobs responded to Opposer's email identified in REQUEST FOR ADMISSION NO. 167.

RESPONSE TO REQUEST FOR ADMISSION NO. 168: Petitioner objects to this request as it seeks information protected by the attorney/client privilege.

REQUEST FOR ADMISSION NO. 169: Admit that in John Jacobs' response e-mail identified in REQUEST FOR ADMISSION NO. 168, John Jacobs stated "PGR is entitled to protect the 'Patriot Guard Rider' name from 'confusingly similar' names used in connection with similar 'goods and services' (missions and current store items)."

RESPONSE TO REQUEST FOR ADMISSION NO. 169: Petitioner objects to this request as it seeks information protected by the attorney/client privilege.

REQUEST FOR ADMISSION NO. 170: Admit that in John Jacobs' response e-mail identified in REQUEST FOR ADMISSION NO. 168, John Jacobs did not state that Opposer, as an individual, was entitled to protect the "PATRIOT GUARD RIDER" name from "confusingly similar" names used in connection with similar "goods and services" (missions and current store items)."

RESPONSE TO REQUEST FOR ADMISSION NO. 170: Petitioner objects to this request as it seeks information protected by the attorney/client privilege.

REQUEST FOR ADMISSION NO. 171: Admit that Opposer forwarded John Jacobs' e-mail identified in REQUEST FOR ADMISSION NO. 168 to the "head shed" and stated

"Folks, We need to think about this ..let's discuss it Wed. night. If we decide this is the route to go, we should probably hit Kentucky, Florida and Nevada."

RESPONSE TO REQUEST FOR ADMISSION NO. 171: Petitioner has made a reasonable inquiry to determine whether such an email exists and the information he knows or can readily obtain is insufficient to enable him to admit or deny this request.

REQUEST FOR ADMISSION NO. 172: Admit that in an e-mail dated November 1, 2006, Opposer solicited legal advice on behalf of the PGR corporation from John Jacobs.

RESPONSE TO REQUEST FOR ADMISSION NO. 172: Petitioner objects to this request as it seeks information protected by the attorney/client privilege.

REQUEST FOR ADMISSION NO. 173: Admit that in an e-mail dated November 2, 2006, John Jacobs responded to Opposer's email identified in REQUEST FOR ADMISSION NO. 172.

RESPONSE TO REQUEST FOR ADMISSION NO. 173: Petitioner objects to this request as it seeks information protected by the attorney/client privilege.

REQUEST FOR ADMISSION NO. 174: Admit that Opposer forwarded John Jacobs' e-mail identified in REQUEST FOR ADMISSION NO. 173 to the "head shed" and stated "I think it's time we poll our membership for any attorney members who would be willing to donate their services to look into this case as well as the trademark infringement issues. John is an 'in house' attorney, so cannot take any outside cases. What say ye?"

RESPONSE TO REQUEST FOR ADMISSION NO. 174: Petitioner has made a reasonable inquiry to determine whether such an email exists and the information he knows or can readily obtain is insufficient to enable him to admit or deny this request.

REQUEST FOR ADMISSION NO. 175: Admit that the "head shed" identified in REQUEST FOR ADMISSION NO. 171 and REQUEST FOR ADMISSION NO. 174 included other members of the Board.

RESPONSE TO REQUEST FOR ADMISSION NO. 175: Petitioner objects to this request as Applicant has failed to define the term "head shed." As such, Petitioner denies this request. Moreover, Petitioner does not recall which individuals were included in the group "head shed." Petitioner has made a reasonable inquiry to determine this information and the information he knows or can readily obtain provides no further definition.

REQUEST FOR ADMISSION NO. 176: Admit that the statement identified in REQUEST FOR ADMISSION NO. 171 sought the opinions of other members of the Board regarding what the PGR corporation could do about "this".

RESPONSE TO REQUEST FOR ADMISSION NO. 176: Petitioner has made a reasonable inquiry to determine whether such an email exists and the information he knows or can readily obtain is insufficient to enable him to admit or deny this request.

REQUEST FOR ADMISSION NO. 177: Admit that the statement identified in REQUEST FOR ADMISSION NO. 174 sought the opinions of other members of the Board regarding what the PGR corporation could do about "this case as well as the trademark infringement issues".

RESPONSE TO REQUEST FOR ADMISSION NO. 177: Petitioner has made a reasonable inquiry to determine whether such an email exists and the information he knows or can readily obtain is insufficient to enable him to admit or deny this request.

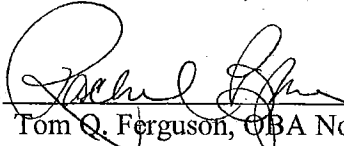
REQUEST FOR ADMISSION NO. 178: Admit that John Jacobs did not authorize Opposer to identify him as Opposer's attorney in Opposer's trademark application.

RESPONSE TO REQUEST FOR ADMISSION NO. 178: Denied.

REQUEST FOR ADMISSION NO. 179: Admit that John Jacobs did not authorize Opposer to identify him as the person to whom correspondence regarding Opposer's trademark application should be sent.

RESPONSE TO REQUEST FOR ADMISSION NO. 179: Denied.

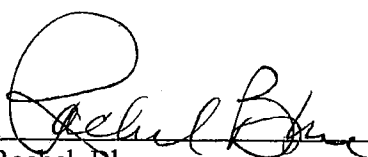
DOERNER, SAUNDERS, DANIEL
& ANDERSON, L.L.P.

By: 
Tom Q. Ferguson, OBA No. 12288
Rachel Blue, OBA No. 16789
320 South Boston Avenue, Suite 500
Tulsa, Oklahoma 74103-3725
Telephone (918) 582-1211
Facsimile (918) 591-5360
tferguson@dsda.com
rblue@dsda.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 6th day of June, 2008, a true and correct copy of the above and foregoing Petitioner's Response to Applicant's Request for Admissions was sent via electronic delivery to DMarr@trexlaw.com and mailed, with proper postage thereon, to :

David J. Marr
James R. Foley
James A. O'Malley
Trexler, Bushnell, Giangiorgi,
Blackstone & Marr, Ltd.
105 West Adams Street, 36th Floor
Chicago, IL 60603


Rachel Blue

IN THE UNITED STATE PATENT & TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

JEFF BROWN,

Opposer,

V.

PATRIOT GUARD RIDERS, INC.,

Applicant.

OPPOSITION NO.: 91181448

TRADEMARK: PATRIOT GUARD
RIDERS AND DESIGN

APPLICATION NO.: 77/040379

DATE FILED: NOVEMBER 9, 2006

EXHIBIT 8

IN SUPPORT OF OPPOSER'S MOTION FOR SUMMARY JUDGMENT

From: Wallin Jason D. <jasonw@geoveritas.com>
Sent: Wednesday, November 9, 2005 8:18 PM
To: Jeff Brown <jeffbrown@valornet.com>
Cc: Husky <HuskyNorsky@hotmail.com>
Subject: RE: PGR - Most recent pickets from WBC site

I live just outside of Greeley and will be there on Friday with 7 confirmed biker patriots we will be trying to meet up about 11:20 and roll in mass. I am currently working with the hog chapters in the area and some of the motorcycle social clubs. His funeral is listed the whole schedule but not on the main page.

As I know more tomorrow I will update you.

Jason Wallin, CISSP
John Deere Agri Services
Fort Collins, CO

970-266-4625
jasonw@geoveritas.com

-----Original Message-----

From: Jeff Brown [mailto:jeffbrown@valornet.com]
Sent: Wednesday, November 09, 2005 6:41 PM
To: Husky; Wallin Jason D.
Subject: PGR - Most recent pickets from WBC site

Hey Guys,
Preacher just sent me your email address to put you on the PGR notification list. Either of you near Beatrice, Nebraska? Let me know and I'll send you details on the ride for Spc. Howe.
Welcome aboard...a couple of things. If you know other riders that want to get involved, regardless of any organization, let me know and I'll put them on the list. Send me any information you want distributed.
Thanks,
Jeff Brown "Twister"
Broken Arrow, OK

=====

Here's what's listed, in case you've not checked their site recently.
If you know riders in these areas, regardless of any group affiliation, pass it along and encourage them to join in a Patriot Guard Ride to honor our fallen heroes and support their families.
If anyone has contact information for rides in these areas, please pass it along to me and I will see it gets out.
Thanks,
Jeff Brown "Twister"
Broken Arrow, OK

=====

BROWN008012

WBC to picket funeral/visitation of Army Spc. Darren D. Howe - at 4 p.m.
Thursday, Nov. 10, at Fox Funeral Home, 1116 N. 19th St., Beatrice,
Nebraska. He was killed by an Iraqi IED.

WBC to picket funeral of Army Spc. Benjamin A. Smith - 10 a.m., Fri.,
Nov.
11, at Bethel Lutheran leper colony 920 3rd St., Hudson, Wisc. Killed by
an
Iraqi IED.

WBC to picket funeral of Army Maj. Gerald M. Bloomfield II - 4 p.m.
Friday
Nov. 11, Stemm-Lawson-Peterson Funeral Home, Elkhart, Indiana. Killed by
Iraqi IED.

No virus found in this incoming message.

Checked by AVG.

Version: 7.5.524 / Virus Database: 269.23.16/1432 - Release Date: 5/14/2008 7:49 AM

BROWN008013

EXHIBIT 7
IN SUPPORT OF OPPOSER'S MOTION FOR SUMMARY JUDGMENT

From: Bpcarr3@wmconnect.com
Sent: Tuesday, November 8, 2005 7:44 AM
To: jeffbrown@valornet.com
Subject: Re: Patriot Guard Ride

Jeff,

I am discussed and surprised that there is a need to protect a soldiers grieving families from protesters. The Millcreek American Legion Riders will honored to act as Patriot Guards for the Erie Pa. area. you can contact me with any future notifications.

Bill Carr
Millcreek Chapter 773 President
bpcarr3@wmconnect.com

BROWN008014

IN THE UNITED STATE PATENT & TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

JEFF BROWN,

Opposer,

v.

PATRIOT GUARD RIDERS, INC.,

Applicant.

) OPPOSITION NO.: 91181448
)
) TRADEMARK: PATRIOT GUARD
) RIDERS AND DESIGN
)
) APPLICATION NO.: 77/040379
)
) DATE FILED: NOVEMBER 9, 2006
)

EXHIBIT 6
IN SUPPORT OF OPPOSER'S MOTION FOR SUMMARY JUDGMENT

Preliminary Amendment

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	77041061
MARK SECTION (no change)	
GOODS AND/OR SERVICES SECTION (1st class)(current)	
INTERNATIONAL CLASS	006
DESCRIPTION	Metal license plates
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 10/27/2005
FIRST USE IN COMMERCE DATE	At least as early as 11/09/2005
GOODS AND/OR SERVICES SECTION (1st class)(proposed)	
INTERNATIONAL CLASS	006
DESCRIPTION	Metal license plates
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 12/09/2005
FIRST USE IN COMMERCE DATE	At least as early as 12/09/2005
GOODS AND/OR SERVICES SECTION (2nd class)(current)	
INTERNATIONAL CLASS	014
DESCRIPTION	Ornamental pins
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 10/27/2005
FIRST USE IN COMMERCE DATE	At least as early as 11/09/2005
GOODS AND/OR SERVICES SECTION (2nd class)(proposed)	
INTERNATIONAL CLASS	014
DESCRIPTION	Ornamental pins

FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 12/14/2005
FIRST USE IN COMMERCE DATE	At least as early as 12/14/2005
GOODS AND/OR SERVICES SECTION (3rd class)(current)	
INTERNATIONAL CLASS	024
DESCRIPTION	Cloth banners; Fabric flags
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 10/27/2005
FIRST USE IN COMMERCE DATE	At least as early as 11/09/2005
GOODS AND/OR SERVICES SECTION (3rd class)(proposed)	
INTERNATIONAL CLASS	024
DESCRIPTION	Cloth banners; Fabric flags
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 11/29/2005
FIRST USE IN COMMERCE DATE	At least as early as 11/29/2005
GOODS AND/OR SERVICES SECTION (4th class)(current)	
INTERNATIONAL CLASS	025
DESCRIPTION	Hats; Short-sleeved or long-sleeved t-shirts
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 10/27/2005
FIRST USE IN COMMERCE DATE	At least as early as 11/09/2005
GOODS AND/OR SERVICES SECTION (4th class)(proposed)	
INTERNATIONAL CLASS	025
DESCRIPTION	Hats; Short-sleeved or long-sleeved t-shirts
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 12/08/2005
FIRST USE IN COMMERCE DATE	At least as early as 12/08/2005
GOODS AND/OR SERVICES SECTION (5th class)(current)	
INTERNATIONAL CLASS	026

DESCRIPTION	Embroidered patches for clothing
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 10/27/2005
FIRST USE IN COMMERCE DATE	At least as early as 11/09/2005
GOODS AND/OR SERVICES SECTION (5th class)(proposed)	
INTERNATIONAL CLASS	026
DESCRIPTION	Embroidered patches for clothing
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 12/23/2005
FIRST USE IN COMMERCE DATE	At least as early as 12/23/2005
GOODS AND/OR SERVICES SECTION (6th class)(no change)	
SIGNATURE SECTION	
SIGNATURE	/JMJ/
SIGNATORY NAME	John Jacobs
SIGNATORY POSITION	Attorney of record
DATE SIGNED	02/08/2007
SIGNATURE	/JMJ/
SIGNATORY NAME	John Jacobs
SIGNATORY POSITION	Attorney of record
DATE SIGNED	02/08/2007
FILING INFORMATION SECTION	
SUBMIT DATE	Thu Feb 08 22:13:10 EST 2007
TEAS STAMP	USPTO/PA-71225109139-2007 0208221310659047-77041061 -200872d7e57f6d148f19fda1 213a6d3c358-N-N-200702082 21237799210

Preliminary Amendment
To the Commissioner for Trademarks:

Application serial no. **77041061** is amended as follows:

Classification and Listing of Goods/Services

Applicant hereby amends the following class of goods/services in the application as follows:

Current: Class 006 for Metal license plates

Original Filing Basis: 1(a).

Proposed: Class 006 for Metal license plates

Section 1(a), Use in Commerce: Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 12/09/2005 and first used in commerce at least as early as 12/09/2005, and is now in use in such commerce.

Applicant hereby amends the following class of goods/services in the application as follows:

Current: Class 014 for Ornamental pins

Original Filing Basis: 1(a).

Proposed: Class 014 for Ornamental pins

Section 1(a), Use in Commerce: Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 12/14/2005 and first used in commerce at least as early as 12/14/2005, and is now in use in such commerce.

Applicant hereby amends the following class of goods/services in the application as follows:

Current: Class 024 for Cloth banners; Fabric flags

Original Filing Basis: 1(a).

Proposed: Class 024 for Cloth banners; Fabric flags

Section 1(a), Use in Commerce: Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 11/29/2005 and first used in commerce at least as early as 11/29/2005, and is now in use in such commerce.

Applicant hereby amends the following class of goods/services in the application as follows:

Current: Class 025 for Hats; Short-sleeved or long-sleeved t-shirts

Original Filing Basis: 1(a).

Proposed: Class 025 for Hats; Short-sleeved or long-sleeved t-shirts

Section 1(a), Use in Commerce: Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 12/08/2005 and first used in commerce at least as early as 12/08/2005, and is now in use in such commerce.

Applicant hereby amends the following class of goods/services in the application as follows:

Current: Class 026 for Embroidered patches for clothing

Original Filing Basis: 1(a).

Proposed: Class 026 for Embroidered patches for clothing

Section 1(a), Use in Commerce: Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 12/23/2005 and first used in commerce at least as early as 12/23/2005, and is now in use in such commerce.

Declaration Signature

If the applicant is seeking registration under Section 1(b) and/or Section 44 of the Trademark Act, the applicant had a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services as of the filing date of the application. 37 C.F.R. Secs. 2.34(a)(2)(i); 2.34 (a)(3)(i); and 2.34(a)(4)(ii). If the applicant is seeking registration under Section 1(a) of the Trademark Act, the mark was in use in commerce on or in connection with the goods or services listed in the application as of the application filing date. 37 C.F.R. Secs. 2.34(a)(1)(i). The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. §1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; that if the original application was submitted unsigned, that all statements in the original application and this submission made of the declaration signer's knowledge are true; and all statements in the original application and this submission made on information and belief are believed to be true.

Signature: /JMJ/ Date: 02/08/2007

Signatory's Name: John Jacobs

Signatory's Position: Attorney of record

Preliminary Amendment Signature

Signature: /JMJ/ Date Signed: 02/08/2007

Signatory's Name: John Jacobs

Signatory's Position: Attorney of record

Serial Number: 77041061

Internet Transmission Date: Thu Feb 08 22:13:10 EST 2007

TEAS Stamp: USPTO/PA-71225109139-2007020822131065904

7-77041061-200872d7e57f6d148f19fda1213a6

d3c358-N-N-20070208221237799210

IN THE UNITED STATE PATENT & TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

JEFF BROWN,

Opposer,

v.

PATRIOT GUARD RIDERS, INC.,

Applicant.

) OPPOSITION NO.: 91181448
)
) TRADEMARK: PATRIOT GUARD
) RIDERS AND DESIGN
)
) APPLICATION NO.: 77/040379
)
) DATE FILED: NOVEMBER 9, 2006
)

EXHIBIT 5
IN SUPPORT OF OPPOSER'S MOTION FOR SUMMARY JUDGMENT

Trademark/Service Mark Application, Principal Register

TEAS Plus Application

Serial Number: 77041061

Filing Date: 11/09/2006

NOTE: Data fields with the * are mandatory under TEAS Plus. The wording "(if applicable)" appears where the field is only mandatory under the facts of the particular application.

The table below presents the data as entered.

Input Field	Entered
TEAS Plus	YES
MARK INFORMATION	
*MARK	<u>PATRIOT GUARD RIDER</u>
*STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	PATRIOT GUARD RIDER
*MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.
APPLICANT INFORMATION	
*OWNER OF MARK	Brown, Jeff
*STREET	8321 S. 8th St.
*CITY	Broken Arrow
*STATE (Required for U.S. applicants)	Oklahoma
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. applicants only)	74801
PHONE	918-449-1652
EMAIL ADDRESS	jeffbrown@valornet.com

AUTHORIZED TO COMMUNICATE VIA EMAIL	No
LEGAL ENTITY INFORMATION	
*TYPE	INDIVIDUAL
*COUNTRY OF CITIZENSHIP	United States
GOODS AND/OR SERVICES AND BASIS INFORMATION	
*INTERNATIONAL CLASS	006
*FIRST USE ANYWHERE DATE	At least as early as 10/27/2005
*FIRST USE IN COMMERCE DATE	At least as early as 11/09/2005
*DESCRIPTION	Metal license plates
*FILING BASIS	SECTION 1(a)
*FIRST USE ANYWHERE DATE	At least as early as 10/27/2005
*FIRST USE IN COMMERCE DATE	At least as early as 11/09/2005
SPECIMEN FILE NAME(S)	<u>\\TICRS\EXPORT2\IMAGEOUT2\770\410\77041061\xml1\FT K0003.JPG</u>
SPECIMEN DESCRIPTION	Mark displayed by supporter at funeral of deceased member of the military
GOODS AND/OR SERVICES AND BASIS INFORMATION	
*INTERNATIONAL CLASS	014
*FIRST USE ANYWHERE DATE	At least as early as 10/27/2005
*FIRST USE IN COMMERCE DATE	At least as early as 11/09/2005
*DESCRIPTION	Ornamental pins
*FILING BASIS	SECTION 1(a)
*FIRST USE ANYWHERE DATE	At least as early as 10/27/2005
*FIRST USE IN COMMERCE DATE	At least as early as 11/09/2005
SPECIMEN FILE NAME(S)	<u>\\TICRS\EXPORT2\IMAGEOUT2\770\410\77041061\xml1\FT K0004.JPG</u>
SPECIMEN DESCRIPTION	lapel pin
GOODS AND/OR SERVICES AND BASIS INFORMATION	
*INTERNATIONAL CLASS	024
*FIRST USE ANYWHERE DATE	At least as early as 10/27/2005

*FIRST USE IN COMMERCE DATE	At least as early as 11/09/2005
*DESCRIPTION	Cloth banners
*FILING BASIS	SECTION 1(a)
*FIRST USE ANYWHERE DATE	At least as early as 10/27/2005
*FIRST USE IN COMMERCE DATE	At least as early as 11/09/2005
SPECIMEN FILE NAME(S)	\\TICRS\EXPORT2\IMAGEOUT2 \\770\410\77041061\xml1\FT K0005.JPG
SPECIMEN DESCRIPTION	motorcycle banner
*DESCRIPTION	Fabric flags
*FILING BASIS	SECTION 1(a)
*FIRST USE ANYWHERE DATE	At least as early as 10/27/2005
*FIRST USE IN COMMERCE DATE	At least as early as 11/09/2005
SPECIMEN FILE NAME(S)	\\TICRS\EXPORT2\IMAGEOUT2 \\770\410\77041061\xml1\FT K0006.JPG
SPECIMEN DESCRIPTION	vehicle mounted flag
GOODS AND/OR SERVICES AND BASIS INFORMATION	
*INTERNATIONAL CLASS	025
*FIRST USE ANYWHERE DATE	At least as early as 10/27/2005
*FIRST USE IN COMMERCE DATE	At least as early as 11/09/2005
*DESCRIPTION	Hats
*FILING BASIS	SECTION 1(a)
*FIRST USE ANYWHERE DATE	At least as early as 10/27/2005
*FIRST USE IN COMMERCE DATE	At least as early as 11/09/2005
SPECIMEN FILE NAME(S)	\\TICRS\EXPORT2\IMAGEOUT2 \\770\410\77041061\xml1\FT K0007.JPG
SPECIMEN DESCRIPTION	baseball-type cap
*DESCRIPTION	Short-sleeved or long-sleeved t-shirts
*FILING BASIS	SECTION 1(a)
*FIRST USE ANYWHERE DATE	At least as early as 10/27/2005
*FIRST USE IN COMMERCE DATE	At least as early as 11/09/2005

SPECIMEN FILE NAME(S)	\\TICRS\EXPORT2\IMAGEOUT2 \\770\410\77041061\xml1\FT K0008.JPG
SPECIMEN DESCRIPTION	T-shirt
GOODS AND/OR SERVICES AND BASIS INFORMATION	
*INTERNATIONAL CLASS	026
*FIRST USE ANYWHERE DATE	At least as early as 10/27/2005
*FIRST USE IN COMMERCE DATE	At least as early as 11/09/2005
*DESCRIPTION	Embroidered patches for clothing
*FILING BASIS	SECTION 1(a)
*FIRST USE ANYWHERE DATE	At least as early as 10/27/2005
*FIRST USE IN COMMERCE DATE	At least as early as 11/09/2005
SPECIMEN FILE NAME(S)	\\TICRS\EXPORT2\IMAGEOUT2 \\770\410\77041061\xml1\FT K0009.JPG
SPECIMEN DESCRIPTION	Embroidered patch
GOODS AND/OR SERVICES AND BASIS INFORMATION	
*INTERNATIONAL CLASS	035
*FIRST USE ANYWHERE DATE	At least as early as 10/27/2005
*FIRST USE IN COMMERCE DATE	At least as early as 11/09/2005
*DESCRIPTION	Association services, namely, promoting the interests of families of deceased military members and families of deceased veterans
*FILING BASIS	SECTION 1(a)
*FIRST USE ANYWHERE DATE	At least as early as 10/27/2005
*FIRST USE IN COMMERCE DATE	At least as early as 11/09/2005
SPECIMEN FILE NAME(S)	\\TICRS\EXPORT2\IMAGEOUT2 \\770\410\77041061\xml1\FT K0010.JPG
SPECIMEN DESCRIPTION	Mark displayed by supporter at funeral of deceased member of the military
ADDITIONAL STATEMENTS INFORMATION	
*TRANSLATION (if applicable)	

*TRANSLITERATION (if applicable)	
*CLAIMED PRIOR REGISTRATION (if applicable)	
*CONSENT (NAME/LIKENESS) (if applicable)	
*CONCURRENT USE CLAIM (if applicable)	
DISCLAIMER	No claim is made to the exclusive right to use RIDER apart from the mark as shown.
ATTORNEY INFORMATION	
NAME	John Jacobs
ATTORNEY DOCKET NUMBER	PGR
STREET	406 Beaumont Circle
CITY	West Chester
STATE	Pennsylvania
COUNTRY	United States
ZIP/POSTAL CODE	19380
PHONE	610.918.1595
EMAIL ADDRESS	mnjjacobs@gmail.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
CORRESPONDENCE INFORMATION	
*NAME	John Jacobs
*STREET	406 Beaumont Circle
*CITY	West Chester
*STATE (Required for U.S. applicants)	Pennsylvania
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. applicants only)	19380
PHONE	610.918.1595
*EMAIL ADDRESS	mnjjacobs@gmail.com

* AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
FEE INFORMATION	
NUMBER OF CLASSES	6
FEE PER CLASS	275
TOTAL FEE DUE	1650
SIGNATURE INFORMATION	
* SIGNATURE	/JABrown/
* SIGNATORY'S NAME	Jeff Brown
SIGNATORY'S POSITION	Executive Director
* DATE SIGNED	11/09/2006
FILING INFORMATION SECTION	
SUBMIT DATE	Thu Nov 09 22:44:06 EST 2006
TEAS STAMP	USPTO/FTK-69.30.154.108-2 0061109224406476609-77041 061-35091b65d3e3b66167b9e 649d542a568c6c-CC-1010-20 061109222524468247

PTO Form 1478 (Rev 9/2006)
OMB No. 0651-0009 (Exp 09/30/2008)

Trademark/Service Mark Application, Principal Register

TEAS Plus Application

Serial Number: 77041061

Filing Date: 11/09/2006

To the Commissioner for Trademarks:

MARK: PATRIOT GUARD RIDER (Standard Characters, see mark)

The literal element of the mark consists of PATRIOT GUARD RIDER. The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, Jeff Brown, a citizen of United States, having an address of 8321 S. 8th St., Broken Arrow, Oklahoma, United States, 74801, requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended.

For specific filing basis information for each item, you must view the display within the Input Table.
International Class 006: Metal license plates

For specific filing basis information for each item, you must view the display within the Input Table.
International Class 014: Ornamental pins

For specific filing basis information for each item, you must view the display within the Input Table.
International Class 024: Cloth banners; Fabric flags

For specific filing basis information for each item, you must view the display within the Input Table.
International Class 025: Hats; Short-sleeved or long-sleeved t-shirts

For specific filing basis information for each item, you must view the display within the Input Table.
International Class 026: Embroidered patches for clothing

For specific filing basis information for each item, you must view the display within the Input Table.
International Class 035: Association services, namely, promoting the interests of families of deceased military members and families of deceased veterans

If the applicant is filing under Section 1(b), intent to use, the applicant declares that it has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(b), as amended.

If the applicant is filing under Section 1(a), actual use in commerce, the applicant declares that it is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended.

If the applicant is filing under Section 44(d), priority based on foreign application, the applicant declares that it has a bona fide intention to use the mark in commerce on or in connection with the identified goods and/or services, and asserts a claim of priority based on a specified foreign application(s). 15 U.S.C. Section 1126(d), as amended.

If the applicant is filing under Section 44(e), foreign registration, the applicant declares that it has a bona fide intention to use the mark in commerce on or in connection with the identified goods and/or services, and submits a copy of the supporting foreign registration(s), and translation thereof, if appropriate. 15 U.S.C. Section 1126(e), as amended.

No claim is made to the exclusive right to use RIDER apart from the mark as shown.

The applicant hereby appoints John Jacobs, 406 Beaumont Circle, West Chester, Pennsylvania, United States, 19380 to submit this application on behalf of the applicant. The attorney docket/reference number is PGR.

Correspondence Information: John Jacobs

406 Beaumont Circle

West Chester, Pennsylvania 19380

610.918.1595(phone)

mnjjacobs@gmail.com (authorized)

A fee payment in the amount of \$1650 will be submitted with the application, representing payment for 6 class(es).

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /JABrown/ Date: 11/09/2006

Signatory's Name: Jeff Brown

Signatory's Position: Executive Director

RAM Sale Number: 1010

RAM Accounting Date: 11/13/2006

Serial Number: 77041061

Internet Transmission Date: Thu Nov 09 22:44:06 EST 2006

TEAS Stamp: USPTO/FTK-69.30.154.108-2006110922440647

6609-77041061-35091b65d3e3b66167b9e649d5

42a568c6c-CC-1010-20061109222524468247

PATRIOT GUARD RIDER





